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June 25, 2018

By ECFS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Ex Parte Presentation, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36**

Dear Ms. Dortch:

Pursuant to the ex parte rules, 47 C.F.R. § 1.1206, AT&T Services, Inc. ("AT&T") submits for filing the **Public Version** of its Surrebuttal in the above-referenced proceeding, filed in response to the Consolidated Rebuttal of Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"). Consistent with the Commission's rules and the March 26, 2018 Protective Order entered by the Commission Staff, AT&T has redacted all "Confidential Information" from the **Public Version**, which it is filing by ECFS.

AT&T is also filing by hand with the Secretary's office one hard copy of the **Confidential Version** of this submission. In addition, copies of all versions of the submission are being served electronically on Aureon's counsel. Two copies are also being provided to Joseph Price at the Wireline Competition Bureau.

Please contact me if you have any questions regarding this matter.

Sincerely,

Michael J. Hunseder

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Enclosures

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PUBLIC VERSION
REDACTED - FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Iowa Network Access Division **Tariff F.C.C. No. 1**	**WC Docket No. 18-60** **Transmittal No. 36**

AT&T SERVICES, INC.'S SURREBUTTAL IN SUPPORT OF ITS OPPOSITION TO AUREON's DIRECT CASE

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Dated: June 25, 2018

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Before the
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In the Matter of	**WC Docket No. 18-60**
Iowa Network Access Division Tariff F.C.C. No. 1	**Transmittal No. 36**

AT&T SERVICES, INC.'S SURREBUTTAL IN SUPPORT OF ITS OPPOSITION TO AUREON'S DIRECT CASE

Pursuant to the Commission's regulations and its April 19, 2018 *Designation Order*,[1] AT&T Services, Inc. ("AT&T") respectfully submits this Surrebuttal in Support of its Opposition to the Direct Case submitted by Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"). More specifically, this Surrebuttal responds to Aureon's May 17, 2018 Consolidated Rebuttal[2] and Aureon's May 25, 2018 letter and submission of additional data.

As demonstrated below, the problems with Aureon's Direct Case that AT&T and other parties identified in their May 10 submissions remain, and Aureon's Revised Tariff Filing violates the Commission's rules, its *Liability Order*,[3] and Section 201(b) of the Communications Act. The Commission should therefore find Aureon's current rate to be unreasonable and direct Aureon to: (a) file a new rate correcting the errors identified below and (b) refund the difference between that corrected rate and its current rate of $0.00576/min.

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[1] Order Designating Issues for Investigation, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36 (Apr. 19, 2018) ("*Designation Order*").

[2] Consolidated Rebuttal of Iowa Network Access Division D/B/A Aureon Network Services, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36 (May 17, 2018) ("Aureon Rebuttal").

[3] Memorandum Opinion and Order, *AT&T Corp. v. Iowa Network Servs., Inc., d/b/a Aureon Network Servs.*, 32 FCC Rcd. 9677 (2017) ("*Liability Order*").

INTRODUCTION

Aureon's proposed rate for Centralized Equal Access ("CEA") service of $0.00576 per minute ("/min.") greatly exceeds the CLEC benchmark when properly calculated, and Aureon has failed to demonstrate the adequacy of the cost and demand data underlying its cost-of-service rate calculation. The evidence further shows that Aureon has manipulated its CEA rate by (a) significantly over-allocating Cable & Wire Facilities ("CWF") costs to its CEA service, (b) understating the demand for CEA service, (c) failing to enforce what it describes as a "mandatory use requirement" and (d) ignoring that its own non-regulated transport services are being used to bypass its CEA service.

As a consequence, AT&T, other IXCs, and their respective long distance customers have been injured by Aureon's longstanding misconduct. Nevertheless, Aureon continues to ask the Commission, in effect, to turn a blind eye to this conduct and permit Aureon to continue to overcharge for its CEA service. Indeed, Aureon goes so far as to ask the Commission to waive and/or roll back its regulations to allow Aureon to charge a price (even higher than its current CEA rate) of nearly a penny per minute. It does so on the fundamentally misguided view that the Commission's decisions from the 1980s mandated, for all times, that Aureon provide a "unique" service (which would cost IXCs more) in order to bring equal access and long distance competition to rural areas. Rebuttal at 2-3.

Aureon's arguments are flatly wrong, and based on long-outdated views of the Commission's policies and of Aureon's own traffic mix. The Commission approved Aureon's operation in order to ***lower*** access rates, not to keep them at high levels in perpetuity. Nor is Aureon's CEA service any longer necessary to provide equal access (which the Commission has phased out), or to facilitate long distance competition (which has been robustly competitive for

decades). In any event, beginning in 2005, Aureon voluntarily changed the nature of its business, and as a consequence substantially all of Aureon's traffic now consists of access stimulation, which has nothing in common with the long distance traffic that CEA service was originally put in place to serve. This is no longer 1988, but 2018, and under current conditions, and under the Commission's new intercarrier compensation rules, Aureon's current CEA rate is unjust and unreasonable. There are simply no facts in this record to justify a rate that results in Aureon—which routes traffic to and from less 0.1% of the population (Aureon Rebuttal at 4)—accounting for more than 10 percent of AT&T's terminating switched long distance cost.

Further, Aureon has not adequately addressed in its Consolidated Rebuttal the serious problems identified by AT&T and others in their Oppositions. *First*, contrary to Aureon's claims, the CLEC benchmark rate must be based on the service that CenturyLink— the competing ILEC—would provide, not a construct that applies CenturyLink's tariff rates to Aureon's network mileages. As the Commission has previously recognized, the competing ILEC benchmark rate is necessary to act as an economic constraint on the CLEC's rate, and for that to occur, Aureon must benchmark its CEA rate against the rate for tandem switching and transport that CenturyLink would provide on its network, using CenturyLink's tandem switches, and the air miles between those switches and the network facilities of Aureon's subtending Local Exchange Carriers ("LECs"). That rate would be between a minimum of $0.002288/min. and a maximum of $0.003188/min., depending on the assumptions made regarding the location of the points of connection with the subtending LECs. Nothing presented in Aureon's Rebuttal undermines that showing.

Second, Aureon has wholly failed to demonstrate the adequacy of the cost and demand data underlying its cost-of-service rate calculation. Multiple unanswered questions exist regarding that

data, and Aureon's rate calculations contain fundamental flaws that substantially overstate the cost-of-service rate for its CEA service. Indeed, when properly calculated, Aureon's cost-of-service rate is **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** far below Aureon's current CEA rate of $0.00576/min. As AT&T demonstrated in its Complaint case, ratepayers have been substantially overpaying for Aureon's CEA service for years, and, unless its CEA rate is dramatically reduced in this proceeding, ratepayers will continue to pay unjust and unreasonable charges—or, faced with Aureon's unreasonable tariffed rate, will continue to bypass Aureon and pay still inflated (but slightly lower) charges to other providers to route calls to access stimulating Competitive Local Exchange Carriers ("CLECs"). In either instance, Aureon's current CEA rate simply cannot be justified.

In considering the legality of that rate, the Commission should ignore Aureon's claims—which are entirely unsupported—that it will cease operating, or that rural customers will be without service alternatives, unless the Commission approves Aureon's inflated tariffed CEA rate. Rural customers in other states receive long distance service without CEA providers, and other CEA providers have been able to operate without charging more than half a penny per minute to transport large volumes of access stimulation traffic. If Aureon cannot do so, it is because Aureon is operating inefficiently, or has made imprudent investment decisions in its network. Neither circumstance justifies Aureon's inflated CEA rate.

As the evidence presented in this proceeding (and in the related complaint proceeding) overwhelmingly demonstrates, Aureon has failed to support its current CEA rate. The network costs that Aureon chooses to allocate to its CEA service (via a lease from an affiliate) account for about 85% of the revenue requirement underlying Aureon's current CEA rate and thus represent the predominant factor in calculating that rate. Yet, after months of litigation and investigation,

Aureon now admits that **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Instead, Aureon asserts that this major deficiency does not matter; that the Commission should approve Aureon's inflated rate based on Aureon "alternative" rate calculations. For the reasons explained below, Aureon's "alternative" rate calculations are as significantly flawed as its primary calculation.[4]

An even more substantial flaw in Aureon's rate calculations is **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END**

[4] Among other problems, Aureon ignores the Commission's rules regarding affiliate transactions, which require that the lease amount charged for CEA service must be the lower of "fair market value" or "fully distributed cost." *See* 47 C.F.R. § 32.27(c)(2). Further, Aureon's alternative rate calculations (which suffer from many of the same defects as Aureon's lease rate calculation) do not substantiate the reasonableness of Aureon's current CEA rate. The costs underlying the alternative rate calculations are unsupported, and the allocation factor (64%) used in those calculations is defective. Contrary to Aureon's claims, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Aureon Rebuttal at 39-40.

[5] *See* page 2 of the electronic version of Annex 3 to the Sullivan Supp. Decl.; *see also* pages 2 of AT&T Exs. 6-11.

CONFIDENTIAL]] As a result, Aureon not only significantly inflates its current CEA rate, but cross-subsidizes Aureon's other non-regulated transport services.

In its rebuttal, Aureon largely ignores the testimony that AT&T has introduced from its cost witness, Daniel P. Rhinehart, which demonstrated the economic irrationality of Aureon's allocation methodology.[6] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

The other factor contributing to Aureon's inflated CEA rate is its unsupported and understated demand forecast. **[[BEGIN CONFIDENTIAL]]** [redacted]

[6] *See* Rhinehart Supp. Decl. ¶¶ 16-22; Rhinehart Supp. Rate Decl. ¶¶ 32-35.

[7] *See* Second Supplemental Rate Declaration of Daniel P. Rhinehart ("Rhinehart Second Supp. Rate Decl."), ¶ 22; Declaration of Carl Albright, Jr. ("Albright Decl."), ¶¶ 9-10.

[8] Aureon Rebuttal at 55 ("the most persuasive model showing that traffic is trending downward was submitted by AT&T.").

[redacted] **[[END CONFIDENTIAL]]** Further, notwithstanding its claim that use of its CEA service is required by the Commission's so-called "mandatory use requirement,"[9] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Instead, it simply seems content with billing its existing IXC customers higher rates and then complaining when its few remaining customers begin to experiment with bypass. That response is a prescription for disaster, and not the response that one would expect from a carrier attempting to offer a competitive service.

Finally, Aureon's assertion that its CEA rate should be capped by the Commission's 2011 default benchmark ($0.00819/min.), instead of the CLEC benchmark rate, is not consistent with either the Commission's rate cap and rate parity regulations or the *Liability Order*, which make clear that Aureon's rates beginning July 1, 2013 were to be capped at the CLEC benchmark rate. Allowing such an excessive rate (or Aureon's current CEA rate) would result in a massive, implicit subsidy to Aureon, paid by ordinary users of long distance and wireless services.

ARGUMENT

I. Issue #1 – The Appropriate Benchmark Rate for Aureon's Switched Access Service is a Maximum of $0.003188 per Minute.

In opposing Aureon's Direct Case, AT&T showed that, under a proper application of the Commission's CLEC benchmark rules, the "competing ILEC" for Aureon is CenturyLink, and

[9] *Id.* at 57-60.

that the appropriate benchmark rate is a maximum of $0.003188 per minute.[10] In its Rebuttal, Aureon argues that CenturyLink is not the "competing ILEC," because Aureon's CEA service is supposedly "unique" and because it does not currently serve all of the LECs that subtend Aureon.[11] Aureon further argues that, even if CenturyLink is the competing ILEC, the appropriate benchmark rate should be based on Aureon's calculation using over 100 miles of transport.[12] Aureon fundamentally misconstrues the Commission's benchmark regulations, and Aureon's positions on this issue are groundless.

A. CenturyLink Is The "Competing ILEC" For Aureon.

In its Rebuttal, Aureon argues that CenturyLink is not the "competing ILEC,"[13] but its arguments have no merit.

First, Aureon argues that Section 251(h) disqualifies CenturyLink from serving as the "competing ILEC."[14] Not true. CenturyLink unquestionably meets the definition of "incumbent local exchange carrier" in Section 251(h). Further, CenturyLink is the "competing" ILEC for Aureon under Section 61.26(a)(2) because, as AT&T explained, CenturyLink would provide tandem and transport services to complete the calls at issue, if Aureon were not doing so.[15] Aureon's reliance on the phrases "with respect to an area" or "in such area" in Section 251(h) (*see* Aureon Rebuttal at 17) is misplaced. The question is not, as Aureon claims, whether CenturyLink should be "deemed the 'competing ILEC' for the areas *served by Aureon's subtending ILECs*."[16]

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[10] AT&T Opp. at 16-41.

[11] Aureon Rebuttal at 2-4.

[12] *Id.* at 29-35.

[13] *Id.* at 17-28.

[14] *Id.* at 17-18.

[15] AT&T Opp. at 23-25; *see* 47 C.F.R. § 61.26(a)(2).

[16] Aureon Rebuttal at 18 (emphasis added).

Rather, the question here is what ILEC is the "competing ILEC" *for Aureon* and its tandem and transport services. CenturyLink indisputably is the ILEC that provides tandem and transport services "with respect to [the] area[s]" served by Aureon. Indeed, as AT&T showed and as Aureon cannot deny, CenturyLink operates tandem switches at each of the primary points of interconnection used by Aureon.[17] Further, prior to Aureon's formation, CenturyLink's predecessor, Northwestern Bell, provided the tandem and transport services. CenturyLink is thus the "competing ILEC" under Section 61.26(a)(2).

Second, Aureon claims that CenturyLink cannot be the competing ILEC because, in Aureon's view, there are "material differences" between Aureon's CEA service and CenturyLink's tandem and transport service.[18] Aureon's arguments are, once again, meritless and misdirected. Under Section 61.26(a)(2), the issue is whether CenturyLink is the ILEC "that would provide *interstate exchange access services*, in whole or in part, to the extent *those services* were not provided by [Aureon.]" 47 C.F.R. § 61.26(a)(2) (emphases added). As AT&T has explained, if Aureon did not provide access service on the calls at issue, then CenturyLink is the ILEC that would provide "in part" the "interstate exchange access services" that would allow long distance carriers to originate and terminate calls to those LECs (and end users) subtending Aureon.[19]

Under the plain text of Section 61.26(a)(2), CenturyLink does not need to provide Aureon's CEA service in the exact same manner as Aureon—rather, CenturyLink is the competing ILEC so long as it is the ILEC that would provide "interstate exchange access services" if "those [exchange access] services" were not provided by Aureon. *See* 47 C.F.R. § 61.26(a)(2). CenturyLink

[17] AT&T Opp. at 23-24; Habiak Rate Decl. ¶¶ 9, 16.

[18] Aureon Rebuttal at 18-24; *see also id.* at 2 (claiming Aureon's CEA service is "unique").

[19] *See* AT&T Opp. at 23-24, 31.

unquestionably provides interstate exchange access service—specifically, CenturyLink provides tandem switching and transport services at the same points as Aureon.[20] Accordingly, whether CenturyLink would provide its interstate access services on the calls at issue in the exact manner as Aureon is irrelevant for purposes of the Commission's benchmark rules. Indeed, in crafting its benchmark rules, the Commission emphasized that CLECs and ILECs do not always provide access services in the same manner, *e.g.*, Seventh Report and Order, *In the Matter of Access Charge Reform*, 16 FCC Rcd. 9923, ¶ 55 (2001) ("*Seventh Report and Order*"), and thus the Commission's benchmark rules incorporate the concept of functionally equivalent service. *See, e.g.*, Eighth Report and Order, *In the Matter of Access Charge Reform*, 19 FCC Rcd. 9108, ¶ 9 (2004) ("*Eighth Report and Order*") ("the rate a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged *by the competing incumbent LEC for the same functions*, and we amend our rules in accordance with this finding") (emphasis added); 47 C.F.R. § 61.26(a)(3) (defining "switched exchange access services" as "the functional equivalent" of certain typical ILEC access services, including "tandem switching" and tandem transport).

In any event, Aureon's claim that its CEA service is somehow "unique" and "materially different" than those of other ILECs is inaccurate and misleading.[21] Notably, the Commission itself has explained that Aureon's service consists of "both tandem switching and transport." *AT&T v. Alpine*, 27 FCC Rcd. 11511, ¶ 48 (2012) ("*Alpine*"). Those are the exact same access services provided by CenturyLink.

[20] AT&T Opp. at 23-24.

[21] Aureon's argument that its service is unique also proves too much. If that were true, then no ILEC (or CLEC) could provide the service, and there would be no competing ILEC.

Further, Aureon's assertion that its so-called "centralized" access services is superior than the access services of CenturyLink is flatly wrong. According to Aureon, its "centralized" service is different—and better—because "IXCs need only connect at a single POI on Aureon's network to gain access to Aureon's extensive network and more than 200 subtending LECs."[22] To support these claims, Aureon relies heavily on decisions from the 1980s,[23] but those decisions have little relevance to the current question of who is the "competing ILEC" (or how to calculate the benchmark rate, *see infra* Part III) under the Commission's CLEC benchmark rules, which were issued in 2001, long after the decisions relied upon by Aureon.

Further, even if the decisions were legally relevant to the regulations at issue, they are factually inapposite. At the time of those decisions, Aureon's traffic consisted of a roughly equal mix of originating and terminating traffic, and Aureon routed very small volumes of traffic, in roughly proportional measure, to each of the then-130+ subtending ILECs. As the Commission concluded in 1988, under those circumstances, where the volume of traffic to any single ILEC was very small, some IXCs could likely benefit from a centralized equal access services, versus establishing direct connections with each individual ILEC.[24] Aureon's service was also necessary because some ILECs, at that time, lacked equal access capabilities.[25]

Since the 1980s, the circumstances, and the nature of traffic handled by Aureon, have dramatically changed. In particular, since those decisions were issued, Aureon has voluntarily elected to interconnect with several carriers (primarily CLECs) that are engaged in access

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[22] Aureon Rebuttal at 19-20.

[23] *See id.* at 20-24.

[24] *In re Application of Iowa Network Access Div.*, 3 FCC Rcd. 1468, ¶ 3 (1988) ("*INS Order*"); *see also In re Application of Ind. Switch Access Div.*, 1986 WL 291436, ¶ 23 (C.C.B. Apr. 10, 1986) ("*Indiana Switch*").

[25] *Id.*; *INS Order*, ¶¶ 3, 23.

stimulation. As a result, the vast majority of Aureon's current traffic—at least 80 percent and in some periods as high as 97 percent—is terminating in nature, and is directed to just a small handful of LECs (about eight or nine carriers) at a discrete set of locations.[26] In short, for about 90 percent or more of the traffic handled by Aureon, IXCs do not require access to an "extensive network" or need to exchange traffic with "more than 200 subtending LECs."[27] Nor do they need to be billed for over 100 miles of transport on that traffic.[28]

Rather, because of the very high proportion of access stimulation traffic, IXCs need an efficient, low-priced way to terminate large volumes of calls to a small handful of LECs at a discrete set of locations. In these circumstances, CenturyLink's so-called "decentralized" tandem and transport service (Aureon Rebuttal at 19) not only offers the same functionality as Aureon's so-called "centralized" service, CenturyLink's service is *far superior*—because of its far lower composite price—than Aureon's service. *See also infra* Part I.B (CenturyLink's lower priced service is preferable than Aureon's service using over 100 miles of transport).

Third, Aureon argues that CenturyLink cannot be the "competing ILEC" because CenturyLink does not currently connect with some of the subtending LECs, and would need to "overhaul" its network to offer a CEA service.[29] These arguments also are meritless and

[26] *See* Habiak Compl. Decl. ¶¶ 15-16.

[27] Aureon Rebuttal at 19.

[28] *See infra* Part I.B. Because most of the traffic is terminating in nature, there is no need for Aureon to provide the "equal access" capability that the Commission deemed beneficial in the 1980s. Indeed, there is no evidence in the record that any of the LECs subtending Aureon have a significant need for "equal access" service on originating calls. Except for grandfathered stand-alone long distance service, which is disappearing, the Commission has forborne, for all incumbent LECs, from "all remaining equal access and dialing parity requirements" due to "dramatic changes" in the market for long distance services. *Petition of USTelecom For Forbearance*, 31 FCC Rcd. 6157, ¶¶ 46, 49-50 (2015) ("*US Telecom Forbearance Order*").

[29] Aureon Rebuttal at 4, 25.

misdirected. To begin with, the Commission's definition of "competing ILEC" is expressly premised on the view that the ILEC is not currently providing the access services used to complete the calls. *See* 47 C.F.R. § 61.26(a)(2) ("competing ILEC" is the ILEC that "would provide" access services, "to the extent" those services "were not" being provided by the CLEC). No aspect of Section 61.26(a)(2) requires a competing ILEC to have existing connections with another entity.

Further, even if there were no current connections between CenturyLink and the subtending ILECs, the price of CenturyLink's tandem and transport services acts as a benchmark under the rules to insure that Aureon's rates are just and reasonable, and properly constrained. *See Seventh Report and Order*, ¶¶ 2-4, 45, 59. The benchmark rules "mimic the operation of the marketplace" by relying upon the principle that CLECs like Aureon could not sustain a rate above the incumbent's price—otherwise, in a competitive market, customers would elect to use the ILEC. *See Id.*, ¶¶ 4, 37, 45; AT&T Opp. at 18-22. The ILEC's price thus represents the price that the CLEC must meet or beat, or else lose customers to the ILEC.

For these reasons, whether CenturyLink is currently connected to all of the subtending ILECs is irrelevant for purposes of determining the "competing ILEC" under the rules. If, in a competitive market, Aureon offers its access service at a price of $0.00576 per minute, and CenturyLink offers its access service at no more than $0.003188 per minute, then economic forces would dictate the establishment of connections between CenturyLink and the subtending LECs—especially because of the very large traffic volumes now at issue, and because CenturyLink operates tandem switches at or near all of the primary POIs at which Aureon exchanges traffic with the subtending LECs. By the same token, if a CLEC raises its retail price above the rates of the competing ILEC, its end users—which are currently connected to the CLEC's facilities rather than the ILEC's switch—would re-establish connections with the ILEC to take advantage of the

lower ILEC price. *See Seventh Report and Order*, ¶ 43 ("if a CLEC attempts to impose an unreasonable surcharges on its customer, the customer receives accurate price signals and may be motivated to find an alternative provider").

Likewise deficient is Aureon's claim that CenturyLink would need to "overhaul" or "reconfigure" its network.[30] Aureon's argument is wrong because, as explained above, under the benchmark rules, the competing ILEC does not need to "offer CEA service comparable to Aureon," as Aureon asserts.[31] Rather, under the rules, the competing ILEC is the ILEC that would provide "exchange access services" if Aureon did not. In any event, because CenturyLink currently offers tandem switching services at the same points at which Aureon's primary POIs are located, then any network changes needed to hand off traffic between CenturyLink and the subtending ILECs would not be extensive. In fact, as explained above, the benchmark rate is premised on the view that customers can switch service from the CLEC to the competing ILEC.

Fourth, Aureon flatly misreads the *Great Lakes Comnet* decision.[32] Although that case involved originating access service, while Aureon's service consists of almost all terminating access service, the Commission's holdings support AT&T's position, not Aureon's. In *Great Lakes Comnet*, the Commission rejected the claim that the small ILEC subtending the CLEC provider of intermediate tandem and transport service could be the "competing ILEC." *AT&T Corp. v. Great Lakes Comnet, Inc.*, 30 FCC Rcd. 2586, ¶ 25 (2015), *aff'd in relevant part*, *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998, 1002-05 (D.C. Cir. 2016). As such, under *Great Lakes*

[30] Aureon Rebuttal at 25.

[31] *Id.*

[32] *Id*. at 26-27.

Comnet, the ILECs subtending Aureon also cannot be the competing ILEC for Aureon.[33] Further, in *Great Lakes Comnet*, the Commission determined that AT&T Michigan was the competing ILEC because it was the ILEC in the area where the CLEC exchanged the calls at issue. *Id.* ¶ 25. Here, Aureon exchanges traffic with the subtending LECs primarily at POIs located in Des Moines, Sioux City, Mason City, Cedar Rapids, Davenport, Spencer, and Omaha—all areas where CenturyLink operates as the ILEC and has tandem switches.[34] Application of the principle in *Great Lakes Comnet* means that CenturyLink is the "competing ILEC."

B. In A Competitive Market, Which the Benchmark Rules Mimic, Aureon Could Not Sustain Charging Over 100 Miles of Transport When CenturyLink Would Provide The Same Tandem And Transport Service Using A Maximum Of 22 Miles.

In its Opposition, AT&T showed that Aureon's calculation of the benchmark rate with CenturyLink as the competing ILEC was incorrect.[35] Aureon's calculations are improperly based on the inclusion of over 100 miles of transport, leading to a benchmark rate between $0.005526/min. and $0.00608/min—far above the actual (and conservative) maximum benchmark rate of $0.003188/min.[36]

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[33] There is also no merit to Aureon's claim that CenturyLink could not be the competing ILEC because it would need to provide interLATA service in alleged violation of its tariff. Aureon Rebuttal at 27-28. As AT&T has explained, if Aureon were not providing the service, IXCs would hand off the traffic at one of the seven CenturyLink tandems, and CenturyLink either (i) would immediately hand it off to the subtending ILEC (as Aureon does) or (ii) would carry it to the subtending LEC's end office. AT&T Opp. at 23-24. Under the first alternative, CenturyLink's service would be confined to the seven cities in which it operates tandem switches, and obviously would not involve any interLATA service. Under the second alternative, the transport provided by CenturyLink would be short (22 miles on average), and not involve any significant interLATA services. In any event, to the extent that CenturyLink could not provide the entire route, and the subtending LEC had to provide a part of the route, then AT&T's 22 mile calculation overstates the benchmark rate.

[34] *See* AT&T Opp. at 23.

[35] AT&T Opp. at 28-32.

[36] *See id.* at 28-29; Aureon Direct Case at 30.

As discussed above and in AT&T's Opposition, the Commission's benchmark rules are meant to mimic a competitive market, in which competitors could not charge rates higher than the prevailing market price of the incumbent. *Seventh Report and Order*, ¶¶ 4, 45, 47. As AT&T showed, based on the locations of CenturyLink's tandem switches at or near the primary Aureon POIs, and assuming, conservatively, that CenturyLink would provide tandem switching and *all* of transport between the tandem switch and Aureon's subtending LECs—an average of 22 miles—then CenturyLink's rate would be $0.003188/min.[37] This composite rate (*see Seventh Report and Order*, ¶ 55, n.109) is the maximum prevailing market price, which Aureon would need to meet or beat in a competitive market, and thus is the proper CLEC benchmark rate. By contrast, Aureon's proffered benchmark rates of $0.005526/min. and $0.00608/min. are inaccurate, and Aureon could not sustain those rates in a competitive market, because IXCs would use CenturyLink's lower-priced tandem switching and transport service to complete calls to and from the end users served by the LECs subtending Aureon.

[37] AT&T Opp. at 25-28. AT&T's Opposition calculated a minimum benchmark rate of $0.002558/min. based on the assumption of one mile of transport. *Id.* at 26. However, if CenturyLink, like Aureon today, were not billing for transport between its tandem switches and the subtending LECs' end offices, then the benchmark rate would be about $0.002288. Under the CenturyLink tariff, if CenturyLink does not provide the transport service between the tandem and the end office, then the only rate elements CenturyLink would bill are tandem switching and multiplexing (because the Tandem Transmission fixed rate and the Tandem Transmission per mile rate are weighted by the billing percentage, which would be zero or close to zero). *See* CenturyLink Operating Cos., Tariff F.C.C. No. 11, § 2.4.7.D., 2d Rev. Page 2-70. However, if (as assumed in the text above) CenturyLink provides 100% of the transport between the tandem and the end office, then the billing percentage under its tariff would be 100%, and CenturyLink would bill a full fixed tandem termination charge and its full tandem transmission charges—and thus a maximum rate of $0.003188/min. *Id.*; *cf.* Sprint Opp. at 14 & n.40 (using one half of the fixed tandem termination charge).

In its Rebuttal, Aureon does not dispute AT&T's calculations, but argues that, for three reasons, AT&T's use of a 22 mile (or 1 mile) transport distance is flawed.[38] None of Aureon's arguments has merit.

First, Aureon argues that a 22-mile transport distance "flies in the face of the very reason for Aureon's existence."[39] This is groundless. For the reasons described above, circumstances have dramatically changed since Aureon's Section 214 authority was issued in 1988, and thus many of the initial "reason[s] for Aureon's existence" (*i.e.*, the need to allow equal access and to aggregate small volumes of traffic) are no longer relevant to the vast majority of CEA traffic handled today by Aureon.[40] Further, and even if that were not the case, the Commission's benchmark rules—which apply generally to all CLECs regardless of their individual business models—were not designed to take into account the "reason for Aureon's existence." Rather, those rules were designed to constrain the ability of Aureon and other CLECs to rely on filed tariffs to force IXCs and their customers to pay unreasonable access rates. *Seventh Report and Order*, ¶ 3. To achieve that goal, the Commission prohibited Aureon and other CLECs from filing tariffs except at rates at or below a benchmark rate based on the competing ILEC. *Eighth Report and Order*, ¶ 9 ("the rate a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged *by the competing incumbent LEC for the same*

[38] Aureon Rebuttal at 29-33.

[39] *Id.* at 29-30.

[40] Aureon claims that the Commission and the Iowa Utilities Board determined that Aureon's CEA service would result in "higher costs" to IXCs. Aureon Rebuttal at 30. This is simply not accurate. Rather, the decisions initially authorizing CEA service recognized that some IXCs (like AT&T) would initially incur one-time, higher non-recurring costs to change existing connections in order to use the CEA service. *Indiana Switch*, ¶¶ 21, 24; *INS Order*, ¶ 38. However, in the long run, CEA service was intended to reduce IXCs' costs (*id.* ¶ 3; *Indiana Switch*, ¶ 23)—as the Commission has more recently explained. *See Alpine*, ¶ 29 ("the Commission approved the creation of INS in order to *lower* the cost of transporting traffic").

functions") (emphasis added). Because the CLEC benchmark rules apply to Aureon as of July 1, 2013, *see* 47 C.F.R. § 51.911(c) (Aureon is subject to the "procedures in Section 61.26"), Aureon must abide by the benchmark rules regardless of the initial "reason for Aureon's existence."[41] In any event, because the Commission approved Aureon "to *lower* the cost of transporting traffic" (*Alpine*, ¶ 29), the initial reason for Aureon's existence is perfectly compatible with the purpose of the Commission's benchmark rules, which is to reduce CLEC access rates to rates that do not exceed those of the competing ILEC. *E.g.*, *Seventh Report and Order* ¶ 59 (the use of a benchmark may "dramatically reduce the tariffed access rates and revenues of many CLECs," but that is warranted and consistent with the purpose of the rules).

Second, Aureon argues that AT&T's calculations measure "distances on a portion of transport facilities that CEA service does not even provide."[42] This, too, is inaccurate and meritless. As explained above, and in AT&T's Opposition, under the Commission's benchmark rules, Aureon, as the CLEC, must meet or beat the prevailing market price, which is the price of CenturyLink's tandem and transport services. The benchmark rate is not based on what the incumbent would charge to provide the CLEC's service.[43] In fact, as explained above, CenturyLink's tandem switching and transport service—either using 22 miles or a single mile—provides the same functionality as Aureon's tandem switching and transport service but at a much lower rate. Thus, allowing Aureon to file a tariff with a higher rate, on the grounds that it could force IXCs to pay for transport services consisting of far longer transport mileages than that offered by CenturyLink for equivalent service, is precisely contrary to the text and purpose of the

[41] Aureon Rebuttal at 19.

[42] *Id*. at 31-32.

[43] *See* AT&T Opp. at 29-31.

Commission's benchmark rule. *See* 47 C.F.R. § 61.26(f); *Eighth Report and Order*, ¶ 9; *Seventh Report and Order*, ¶ 43 (CLECs may not impose an "unreasonable surcharge").[44]

Further, Aureon is simply wrong in claiming that AT&T has improperly "ignored the mileage associated with the transport to route traffic to seven remote tandems in Iowa."[45] Neither Aureon nor CenturyLink require IXCs to transport traffic from Des Moines to the other primary POIs. As Aureon conceded in its Direct Case, under its CEA service, IXCs have the "flexibility" to exchange "traffic at any POI."[46] Consequently, regardless of whether IXC traffic is tendered to Aureon or CenturyLink, IXCs could hand off that traffic at Des Moines, Sioux City, Mason City, Cedar Rapids, Davenport, Spencer, or Omaha, and it would then be exchanged with the subtending LECs in those areas. Nevertheless, Aureon has tariffed an improperly high rate of $0.00576/min. on the grounds that it must haul traffic over 100 miles across Iowa, even though CenturyLink could and would provide the same tandem and transport access service at a much lower rate, with a maximum average distance of about 22 miles.[47] The 100+ miles of transport that Aureon uses to calculate its benchmark rate is simply excessive, and is being used to try to justify a rate far above

[44] Because the vast majority of the traffic hauled by Aureon is traffic terminating to one of about eight LECs, long distance carriers do not need to purchase, for the vast majority of the traffic, a "centralized" service, at the premium price tariffed by Aureon. Aureon's use of over 100 miles of transport to calculate the CLEC benchmark rate is merely an improper attempt to force IXCs to take and pay Aureon for an unnecessary service, contrary to the purpose of the rules. *Seventh Report and Order*, ¶ 2 (the benchmark rules were put in place to prevent CLECs from relying on their tariffs to "demand payment from IXCs for access services that the long distance carriers likely would have declined to purchase at the tariffed rate").

[45] Aureon Rebuttal at 31. Aureon's use of the word "remote" to describe tandem switches located in cities like Omaha, Cedar Rapids, Sioux City, Mason City and Davenport reflects its improper approach. Those tandems are not "remote" but are far closer to the subtending LECs and end users. In particular, because over 90 percent of Aureon's traffic goes to a few discrete points in Iowa, such as Spencer, it is Aureon's Des Moines tandem that is in fact remotely located from the largest subtending LECs.

[46] Aureon Direct Case at 29.

[47] *See* AT&T Opp. at 27.

the rate that the competing ILEC would actually provide if it were providing the access service rather than Aureon.

If Aureon elected not to use a composite rate and instead mirrored CenturyLink's per minute tandem switching rate and per minute, per mile tandem transport rate, then IXCs would unquestionably take advantage of the "flexibility" that Aureon (like CenturyLink) offers, and hand off all or virtually all of the traffic at the POI closest to the terminating LEC. *See also* Sprint Opp. at 13-15. In that instance, Aureon would charge tandem switching and about 1 mile of tandem transport—not 100 (or more) miles of transport. While Aureon is free to use a composite rate under the Commission's rules, Aureon may not use a composite rate as a device to charge more than what it could charge if it mirrored the individual CenturyLink rate elements. Brief for Amicus Curiae FCC, *Paetec Commc'ns v. MCI Commc'ns*, Nos. 11-2268 & 11-1204, 2012 WL 992658, at *20 (3d Cir. Mar. 14, 2012) ("the rate structure a CLEC chooses for its tariff has no bearing on the maximum rate level").

Third, Aureon argues that AT&T and Sprint ignore the "plight" of "smaller IXCs."[48] This is absurd. To begin with, there are no smaller IXCs that have intervened in this proceeding to request that the Commission approve Aureon's higher rate.[49] In fact, both larger and smaller IXCs

[48] Aureon Rebuttal at 33.

[49] Many years ago, the Commission concluded that the market for stand-alone long distance services was diminishing due to competition and other market factors. *E.g.*, *In re SBC Commc'ns and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd. 18290, ¶ 91 (2005) ("long distance service purchased on a stand-alone basis is becoming a fringe market"); *US Telecom Forbearance Order*, ¶¶ 49-50. As such, Aureon's focus on "smaller IXCs" is out-of-date, in that most long distance services are provided as part of a bundled service offering or other new service. *Id.* Indeed, in the Complaint case, Aureon **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

would benefit if Aureon's rate were reduced to just and reasonable levels, as the Act and the CLEC benchmark rules require. Instead, out of over 1,300 LECs, Aureon has been responsible for about 12 percent of AT&T's nationwide terminating billed access expense.[50] Because Aureon tariffs and bills such high rates, and carries such a disproportionate share of traffic due to its voluntary arrangements with traffic pumpers, Aureon's high rates hurt *all* ratepayers, both large and small IXCs, and all users of ordinary long distance and wireless services.

Aureon further claims—but provides no evidence in support—that these "smaller IXCs" may lack points of presence in the cities where CenturyLink has tandem switches, and thus may prefer to connect "to a single point in Iowa."[51] This is pure speculation on Aureon's part, and, in fact, Aureon ignores that, because there is a robustly competitive market for wholesale long distance termination services, if there are any "smaller IXCs" that lack points of presence near CenturyLink's tandems, those IXCs could easily purchase lower-cost termination services from wholesale providers, rather than purchase Aureon's services at $0.00576/min. In fact, at the current time, the price of those termination services are artificially inflated as a result of Aureon's high tariffed rate, and if Aureon's rate were reduced to a just and reasonable level, then "smaller IXCs" would pay reduced rates.

Finally, Aureon criticizes Sprint's showing that, on intrastate traffic, Aureon bills Sprint only about 20 miles of transport—which reinforces AT&T's claim that Aureon's proposed transport distance of over 100 miles is patently unreasonable.[52] Because Aureon's intrastate charges are distance-sensitive, IXCs including Sprint can take advantage of the "flexibility"

[50] AT&T Formal Compl. ¶ 8; Habiak Compl. Decl. ¶ 54.

[51] Aureon Rebuttal at 33.

[52] *See id*. at 34; Sprint Opp. at 14-15.

offered by Aureon and "interconnect[] at POIs other than Des Moines."[53] By contrast, on interstate traffic, Aureon's use of a distance-insensitive rate for its interstate service results in IXCs paying the same per-minute rate regardless of where the traffic is handed off to Aureon. Sprint's intrastate routing data thus demonstrates that the 100+ miles of transport assumed in Aureon's benchmark rate calculations, on the basis that this is what Aureon "actually provides," is not accurate. In a competitive market—which the Commission's rules seek to mimic—neither Aureon nor CenturyLink would be transporting the traffic at issue over 100 miles across Iowa. Rather, the calls would be exchanged more efficiently, at the point closest to the terminating end office, resulting in a much lower rate.

II. Issue #2 – The Adequacy of the Cost and Demand Data Supporting Aureon's Current Rate of $0.00576/min.

In the *Liability Order*, the Commission found that significant questions had been raised regarding the calculation of Aureon's CEA rates (including the calculation of the lease amounts assigned to Aureon's CEA service), Aureon's cost allocation practices, and the possible cross-subsidization of Aureon's other non-regulated transport services.[54] And in its *Designation Order*, it identified these same issues for investigation and directed Aureon to produce additional cost and demand data in support of its current CEA rate and to answer specific questions regarding the derivation of that rate.

Notwithstanding two separate opportunities, Aureon has failed to explain the basis for its cost-of-service rate calculations or demonstrate the reasonableness of its current CEA rate. As AT&T has previously explained (and Aureon has not come close to rebutting), the deficiencies in

[53] Aureon Rebuttal at 34.

[54] *See Liability Order*, ¶ 30.

its rate calculations are significant and have inflated Aureon's CEA rate by **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

A. Deficiencies in Aureon's Lease Calculation

In its Opposition, AT&T identified a number of problems and raised a number of questions regarding the data underlying Aureon's calculation of the network costs (i.e., the lease amount) allocated to Aureon's CEA service and used in calculating Aureon's current CEA rate. In its Rebuttal, Aureon largely ignores or brushes aside these significant issues.

1. Aureon's Continuing Failure to Identify the Source of the COE and CWF Revenue Requirements Used to Calculate the Lease Amount Allocated to CEA Service.

In the *Designation Order*, the Commission directed Aureon to provide a spreadsheet showing how the COE and CWF revenue requirements were calculated.[55] The Commission further directed Aureon to provide data (separately for each revenue requirement) regarding: (a) each type of asset included; (b) capital cost information for each identified asset, including gross investment, accumulated depreciation, net investment, return on net investment, depreciation expense and federal and state income tax expense; and (c) other expense data, including maintenance and repair, network operations selling, general, administrative, and any other overhead and taxes other than income taxes.[56]

In neither its Direct Case nor its Rebuttal has Aureon provided this information. In its Direct Case, Aureon asserted that **[[BEGIN CONFIDENTIAL]]** [redacted]

[55] *Designation Order*, ¶ 27.

[56] *Id.*

[57] Aureon Direct Case at 43.

[redacted]

[58] *Id*.

[59] AT&T Opp. at 46-49.

[60] *Id.*

[61] *Id.*

[62] Aureon Rebuttal at 40.

[redacted] **[[END CONFIDENTIAL]]** Further, given the fact that network costs constitute about 85% of the revenue requirement for its CEA service, Aureon cannot simply brush this deficiency aside by asserting that some other "alternative" calculations—for which it has not provided any detailed support—might justify a higher rate. In short, Aureon has left the Commission in the same position it was in during the AT&T Complaint proceeding—with "significant questions" that have still not been answered.

2. Aureon's Use of an Unexplained and Inflated DS-1 Circuit Count in its Lease Cost Calculation.

As AT&T explained in its Opposition, **[[BEGIN CONFIDENTIAL]]** [redacted]

[63] AT&T Opp. at 51-52.

[64] *Id.*

[65] *Id.*

[redacted]

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *See* Aureon Rebuttal at 43.

[70] *Id.* at 41.

[redacted] **[[END CONFIDENTIAL]]**

3. Aureon's Unexplained Decline in the COE Costs Used in its Lease Cost Calculation.

In its Opposition, **[[BEGIN CONFIDENTIAL]]** [redacted]

[71] AT&T Opp. at 52, n.109.; *see also* AT&T Ex. 6 (2016 circuit chart); Sullivan Direct Case Decl., Attachment 3 (2018 circuit chart).

[72] Aureon Rebuttal at 42 n.134.

[73] AT&T Opp. at 53.

[redacted] **[[END CONFIDENTIAL]]**

As previously noted, if Aureon expects its IXC customers to pay its CEA rates, it should provide explanations—not excuses—for its rate calculations. The fact that it refuses to do so further counsels in favor of rejecting Aureon's current CEA rate.

[74] *Id.*

[75] Aureon Rebuttal at 46.

[76] *Id.* at 51-52.

[77] *Id.*

4. Aureon's Unexplained and Apparently Inflated Estimate of the DS-0 Miles Used in its Lease Cost Calculation.

Aureon adopts a similar approach in responding to **[[BEGIN CONFIDENTIAL]]**

[redacted]

[78] *Id.* at 43 n.138

[redacted] **[[END CONFIDENTIAL]]**

B. Aureon's Misallocation of the CWF Costs Used in its Lease Cost Calculation.

In its Opposition, AT&T presented extensive evidence (including multiple declarations from its cost expert) demonstrating that **[[BEGIN CONFIDENTIAL]]** [redacted][2]

[79] *See* AT&T Opp. at 57, n118. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[80] *See Id.* at 58-68; Rhinehart Supp. Rate Decl. ¶¶ 26-35; AT&T Ex. 3, Rhinehart Supp. Decl. ¶¶ 16-32.

[81] *See* AT&T Opp. at 63, n.136, explaining the basis for this calculation.

[82] *See Id.* n. 138, explaining the basis for this calculation. As further noted, the adjusted rate **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[redacted]

[83] *See* AT&T Opp. at 58-65.

[84] *See* AT&T Opp. at 66, Table 8, citing to the "Circuit Tables" included in Annex 3 to Mr. Sullivan's Supplemental declaration and AT&T Exhibits 6 to 11; *see also* Hilton Supp. Rate Decl. ¶¶ 14-15.

[85] *See* Rhinehart Second Supp. Rate Decl. ¶ 18; *see also* Albright Decl. ¶¶ 7-8.

[86] *See* Rhinehart Second Supp. Rate Decl. ¶¶ 18-21; *see also* AT&T Opp. at 65; Rhinehart Supp. Rate Decl. ¶ 35; Rhinehart Supp. Decl. ¶ 23.

[87] *See* Rhinehart Supp. Decl. ¶¶ 21-24; Rhinehart Supp. Rate Decl. ¶ 35.

[88] *See* Rhinehart Supp. Decl. ¶ 21; *see also* AT&T Ex. 39, NECA Guideline, at 2 ("[T]he cost allocation methodology should produce reasonable results and be cost causative.")

[89] *See* AT&T Opp. at 65-68.

[redacted] **[[END CONFIDENTIAL]]** As discussed in greater detail below, Aureon's allocation methodology does not produce a reasonable result, as required by the NECA Guideline. In addition, Aureon's

[90] *See* Rhinehart Supp. Decl. ¶ 22; Rhinehart Supp. Rate Decl. ¶¶ 33-34.

[91] *See id*.; *see also* Rhinehart Second Supp. Rate Decl. ¶¶ 8-11.

[92] *See* Rhinehart Supp. Decl. ¶ 22; Rhinehart Supp. Rate Decl. ¶ 34. While the number of DS-1 circuits assigned to a T-3 facility can impact the amount of cost allocated to each DS-1 Circuit, the CWF cost of the T-3 facility remains the same. *See* Rhinehart Second Supp. Rate Decl. ¶¶ 18-21.

[93] *See* Aureon Rebuttal at 45-46.

[94] *Id.* at 49.

approach does not produce a result that can be reconciled with the way that DS-1 and DS-3 circuit mileage is priced in the real world.

First, as previously noted, the NECA Guideline makes clear that the allocation methodology chosen must produce a reasonable result. More specifically, the NECA Guideline states that "the cost allocation methodology should produce reasonable results and be cost causative."[95] In its Rebuttal, however, neither Aureon nor any of its witnesses even mentions this requirement. Instead, they appear to take the position that because the NECA Guideline identifies the "Path Method" as a possible methodology to be used in allocating network costs, that alone justifies its use. As both Mr. Rhinehart and Mr. Albright explain, that is not how the NECA Guideline works.[96] Rather, the choice of methodology must produce a reasonable result to be justified.[97] Nowhere in either its Direct case or its Rebuttal has Aureon provided such a justification, and for good reason: none exists.

Second, as Mr. Rhinehart and Mr. Albright discuss in their respective declarations, there is no engineering or economic justification for allocating CWF costs on the basis of the Path Method.[98] **[[BEGIN CONFIDENTIAL]]** [redacted]

[95] AT&T Ex. 39 at 2.

[96] *See* Rhinehart Second Supp. Rate Decl. ¶¶ 18-22; Albright Rate Decl. ¶¶ 9-10.

[97] *Id.*

[98] *See id.*

[99] *See supra* Note 83.

[redacted]

[100] *See* Rhinehart Second Supp. Rate Decl. ¶ 13; *see also* the "Circuit Tables" includes in Annex 3 to Mr. Sullivan's Supplemental Declaration and AT&T Exhibits 6 to 11.

[101] *See* Rhinehart Second Supp. Rate Decl. ¶ 14.

[102] *Id.* ¶¶ 21-22.

[103] *Id.* ¶ 5.

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.*

[redacted] **[[END CONFIDENTIAL]]**

Third, as Mr. Rhinehart discusses in his Second Supplement Rate Declaration, the per mile rates that carriers charge for DS-1 service as compared to DS-3 service also support allocating CWF costs on a T-3 facility basis as opposed to a DS-1 circuit basis.[108] If Aureon's allocation approach were defensible, one would expect that the per mile rates for DS-1 service would be as high or higher than the per mile rates for DS-3 service. But, in actuality, the price relationship is exactly the opposite. The per mile rates for DS-1 service are generally much lower than the per mile rates for DS-3 service.[109] For example, the per minute transport rates that AT&T's ILECs charge for DS-1 service are much lower than the per minute transport rates for DS-3 service. While the exact ratio varies by AT&T ILEC, the per minute transport rates for DS- 3 service are generally between 5 and 35 times higher than the per minute transport rates for DS-1 service.[110] This same relationship can also be seen in the per minute transport rates for the DS-1 and DS-3 services set forth in the NECA tariff – the per minute transport rates for DS-3 service are 8.7 times higher than the per minute transport rates for DS-1 service.[111] As Mr. Rhinehart explains, this rate differential is largely attributable to the fact that the CWF costs of transporting traffic over a fiber pair used to carry a muxed DS-1 circuit can be shared with multiple, muxed DS-1 circuits, whereas the CWF costs of the fiber pair used to transport a single DS-3 circuit must be bourn entirely by that DS-3 circuit, thereby resulting in a higher per mile rate.[112]

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[108] *Id.* ¶¶ 25-29.

[109] *Id.*

[110] *Id.* ¶¶ 28-29

[111] *Id.* ¶ 27.

[112] *Id.* ¶ 29

[[BEGIN CONFIDENTIAL]] [redacted] **[[END CONFIDENTIAL]]** Clearly, to the extent that approach was sufficient for purposes of Aureon's rate calculation it is sufficient for Mr. Rhinehart's analysis.

Finally, Aureon's claim that allocation of CWF costs on a DS-1 circuit basis is necessary because **[[BEGIN CONFIDENTIAL]]** [redacted]

[113] *See* Aureon Rebuttal at 48.

[114] *See* Rhinehart Second Supp. Rate Decl. ¶¶ 12-15.

[115] *See id.* ¶ 13.

[116] *Id.* ¶ 13.

[117] *Id.* ¶ 14.

[redacted] **[[END CONFIDENTIAL]]**

Further, Aureon's continued insistence that its CEA network should be treated as if it is 1988, and the predominate traffic being transported is traditional long distance traffic, is a total fiction. The overwhelming majority of the traffic transported on Aureon's CEA network is not traditional long distance traffic directed to dispersed rural business and residential customers, but access stimulation traffic that is carried to a small handful of discrete locations. Indeed, only **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** of AT&T's terminating CEA traffic is traditional long distance traffic, and the remainder is access stimulation traffic that has nothing in common with the long distance traffic that CEA service was initially designed to serve.[119] That traffic is not in any respect "sized for rural areas." To the contrary, the volumes are enormous, and they are directed to a handful of CLECs. Moreover, Aureon knows the location of these CLECs and has the capability to size its network accordingly. What is has not been willing to do is share that data in this proceeding so that the Commission and other parties can assess it. Rather, what it would prefer to do is pretend that the nature of this traffic does not matter, which is false.

In sum, Aureon has not come close to justifying the method by which it has allocated CWF costs to its CEA service. Its current CEA rate should therefore be rejected and a new rate based on a proper allocation of CWF costs should be adopted.

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[118] Aureon Rebuttal at 45.

[119] *See* AT&T Ex. 23 **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

C. Aureon's Cross-Subsidization of Non-Regulated Services

[[BEGIN CONFIDENTIAL]] [redacted] **[[END CONFIDENTIAL]]** And AT&T raised a number of questions regarding the reasons for the dramatic increase in the level of Aureon's CWF investment since 2010 and Aureon's rationale for allocating more than 60 percent of those costs to its declining CEA service.[122] As AT&T noted, the only logical explanation is that Aureon's CEA service has been used to subsidize Aureon's network expansion, and thereby cross-subsidize its other non-regulated transport services.[123]

In its Rebuttal, Aureon largely ignores this evidence. It does not directly respond to AT&T's showing that **[[BEGIN CONFIDENTIAL]]** [redacted]

[120] *See* AT&T Opp. at 66.

[121] *Id.* at 66-67.

[122] *Id.* at 67-68.

[123] *Id*. at 68.

[124] Aureon Rebuttal at 51-52.

[redacted] **[[END CONFIDENTIAL]]** It should be further noted that Aureon's current explanation for these investments does not match the explanations for these investments that Aureon provided to the Commission in its prior Tariff Filings.[126]

But even more significantly, Aureon at no point denies AT&T's claim that its CEA service has borne the financial brunt of these admittedly unwise investments. Instead, Aureon unabashedly asserts that additional CWF investments (beyond the current level of investment) will need to be made in its CEA service,[127] which it will no doubt contend should be recovered in future rates. Aureon's seeming disregard for the interests of its CEA customers is not only astounding, it is symptomatic of a mindset that has resulted in Aureon's CEA rates being used to cross-subsidize its other non-regulated transport services. As Aureon's current web site makes clear, CEA service (which is barely mentioned) is no longer the focus of Aureon's business.[128] Given that reality, what possible justification exists for allocating more than 70% of its current CWF investment to that service? The Commission should put a halt to this practice.

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[125] *See id.*

[126] *See* AT&T Ex. 15, Aureon 2010 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics to bring newer technologies and increased capacity . . . . Approximately $20 million has been expended since 2006 and an additional $4.5 million is planned for 2010."); AT&T Ex. 16, Aureon 2012 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics . . . . Approximately $9.6 million has been expended since 2009 and an additional $11.3 million is planned for 2012."); AT&T Ex. 17, Aureon 2013 Tariff Filing at 2 ("INS has plans to upgrade its fiber routes and electronics . . . . Approximately $20.3 million has been expended since 2010 and an additional $22.5 million is planned for 2013.").

[127] Aureon Rebuttal at 3.

[128] *See* Albright Decl., Att. A (webpage promoting the various services now offered by Aureon).

D. Aureon's Traffic Demand Forecast Is Not Reliable.

Despite having two separate opportunities to identify and explain the basis and source of its 2018 test year demand forecast, Aureon has not done so. In the *Designation Order*, the Commission noted that it had been unable to replicate Aureon's demand forecast using the excel trend analysis identified by Aureon's witness, Jeff Schill,[129] and Mr. Rhinehart indicated in his Supplemental Rate Declaration that that he had encountered the same problem.[130] In neither its Direct Case nor its Rebuttal does Aureon explain the basis for its demand forecast. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

Worse yet, in its Rebuttal, Aureon admits that **[[BEGIN CONFIDENTIAL]]** [redacted]

[129] *Designation Order*, ¶ 30.

[130] Rhinehart Supp. Rate Decl. ¶ 40.

[131] AT&T Opp. at 75-80.

[132] Aureon Rebuttal at 55; see also AT&T Opp. at 79, Table 11 **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[redacted] **[[END CONFIDENTIAL]]**

Aureon also does not meaningfully respond to the Commission's directive that it provide an analysis of its past forecasts as compared to its actual traffic.[135] In its Direct Case, Aureon largely ignored this request, and in its Rebuttal, it resurrects an argument that it made in the AT&T Complaint proceeding, contending that that **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** As can be seen from Table 10 in AT&T's Opposition, for the test periods up to and including the 7/1/10 to 6/30/11 test period, Aureon consistently underestimated demand by an average of 240 million

[133] *Id.* at 57-58.

[134] AT&T Opp. at 82; *see also* Habiak Rate Decl. ¶¶ 28-30.

[135] *See Designation Order*, ¶ 31.

[136] See Aureon Rebuttal at 52-54. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[137] *See* AT&T Reply Brief (in the complaint proceeding) at 54-56.

[138] *Id.* at 54.

minutes per year.[139] Further, for two test periods, including the 2014 test period (7/1/06 to 6/30/07, 7/1/14 to 6/30/15), Aureon underestimated the demand by at least 400 million minutes.[140] As AT&T has demonstrated, minute differentials of this magnitude significantly impact Aureon's CEA rate.[141]

Moreover, it is telling that, in 2013, Aureon elected to adjust its rates in advance of its bi-annual tariff filing based on a decline of 5.7% decline in its prior forecast. The fact that Aureon took this unusual step completely undermines its claim that forecast inaccuracies in the range of 5-6% are not significant. Further, it raises the question as to why Aureon did not make similar off-year adjustments to its CEA rates filings when it underestimated (rather than overestimated) demand. In fact, no such adjustments were made, even though Aureon's underestimated demand by more than 5% in every one of its other test period forecasts, and for some of those forecasts the miss was much higher, including one forecast where the percentage difference was 22% and in another it was 31%.[142] Not surprisingly, Aureon does not address this issue in its Rebuttal. So that, too, remains a mystery.

Aureon's defense of its failure to take bypass traffic into account in its demand forecast is likewise unconvincing and is in actuality a study in contradiction. Aureon begins by reiterating its position that AT&T and other IXCs are required by a so-called "Commission's mandatory use" policy to deliver their long distance traffic to Aureon's CEA network for transportation to the LECs that subtend Aureon's network,[143] and it further contends that it has a "longstanding

[139] AT&T Opp. at 73, Table 10.

[140] *Id.*

[141] *Id.* at 82-83 (showing rate impact resulting from an increase in forecasted demand).

[142] *See* AT&T Reply Brief (in the complaint proceeding) at 55.

[143] Aureon Rebuttal at 56-57.

policy" prohibiting use of its other network facilities for purpose of bypass.[144] But it offers no evidence that it **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

Finally, Aureon's response to Inteliquent's suggestion that it could deliver up to 250 million minutes per month (*i.e.*, 3 billion minutes per pear) to Aureon for delivery over its CEA network is baffling. Notwithstanding its insistence that there is a "mandatory use requirement," Aureon claims **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** To say the least, this is an odd response. One would expect that Aureon would react to this development positively. To the extent this traffic could be added to Aureon's CEA network, its rate for CEA service would decline, thereby benefiting

[144] *Id.* at 57-60 & n.199.

[145] *Id.*

[146] *See* AT&T Ex. 37.

[147] Aureon Rebuttal at 55 n.192.

[148] *Id.*

all of its IXC customers and their customers. One would further expect that in preparing its rate filing, Aureon would have polled its existing IXC customers to determine their potential demand for CEA service, and in that connection, gathered whatever additional specific information was needed. Apparently that did not happen here. Instead, Aureon did not take the Inteliquent volumes into account and instead presented a demand forecast, the origins of which are unknown, projecting a 400 million minute decline in its traffic in 2018.

In sum, Aureon has not come close to substantiating its demand forecast, and for this additional reason its CEA rate should be rejected.

E. Aureon's Alternative Rate Calculations Suffer from the Same Problems as its Lease Rate Calculation and are Unreliable.

In its Rebuttal, Aureon effectively concedes that it cannot support the basis for its lease rate calculation. Indeed, it admits that **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**—by arguing that "[t]he actual amount of the lease charge is moot when it has been established that the charge itself is below fully distributed cost of the underlying assets as required by Section 32.27(c)(2)."[149] Setting aside for a moment Aureon's misplaced reliance on the Commission's affiliate transaction rules (*see infra* Section II.F), Aureon has failed to demonstrate—either through its "Additional Cost Justification Methodology" or its "Alternative Revenue Requirement Calculation"—that its lease rate is less than the fully distributed costs of the underlying assets used to provide CEA service.

[149] *Id*. at 40.

1. Aureon's Additional Cost Justification Methodology

[[BEGIN CONFIDENTIAL]] [redacted]

[150] *Id*. at 37.

[151] *See* Sullivan Decl., Att. 4, Section 2.

[redacted]

[152] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[redacted] **[[END CONFIDENTIAL]]**

2. Aureon's Alternative Revenue Requirement Calculation

Aureon's "Alternative Revenue Requirement Calculation" is similarly unjustified. That calculation suffers from many of the same problems as its rate calculation using a "CWF lease expense," and certainly does not demonstrate that Aureon's current CEA rate is reasonable. *First*, Aureon's alternative rate calculation is not the calculation that was used to develop Aureon's current CEA rate, nor does it reflect either the costs that were used to develop that rate, or the costs that are reported on Aureon's books and records in the ordinary course.[153] Instead, it is a

[153] *See* Rhinehart Supp. Rate Decl. ¶ 46.

hypothetical construct **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Further, it produces a very different rate, which calls into question the reliability of both calculations. [155]

Second, as AT&T explained in its Opposition, the single 64% allocation factor that Aureon used to allocate COE investment and CWF investment and expense between Aureon's CEA service and its other non-regulated services was problematic in two respects.[156] **[[BEGIN CONFIDENTIAL]]** [redacted]

[154] *Id.*

[155] As Mr. Rhinehart explained in his Supplemental Rate Declaration, one would expect, if correctly done, both calculations would produce similar results. The fact that they do not raises a red flag regarding the reliability of both calculations. *See* Rhinehart Supp. Rate Decl. ¶ 47.

[156] AT&T Opp. at 70-72.

[157] *Id.*

[158] *Id*; s*ee also* Rhinehart Supp. Rate Decl. ¶ 48.

[159] AT&T Opp. at 71-72.

[160] *Id.*

[161] *Id.*

[redacted] **[[END CONFIDENTIAL]]**

In its Rebuttal, Aureon **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

Finally, in the *Designation Order*, the Commission requested detailed data regarding the assets underlying the COE and CWF "revenue requirements" set forth in Annex 3.[164] As noted above, Aureon has not produced such data in support of its "CWF lease expense" rate calculation (*see* Section II.A.1 above), nor has it produced such data in connection with its alternative rate calculations. Instead, it simply relied on its overall account balances in doing its alternative rate calculations. But that approach does not answer the question of what specific assets are used in

[162] *Id.* This number was derived by replacing the allocator of 64% in lines 163, 166 and 172 of Section 5, Part 64, line 68a of the electronic version of Aureon's alternative rate calculation (Annex 2) with 24% for the COE investment allocator (line 163) and 9.6% for the CWF investment allocator (line 166) and for the CWF expense allocator (line 172).

[163] Aureon Rebuttal at 39-40.

[164] *Designation Order*, ¶ 23.

providing CEA service and what specific expenses are incurred in providing CEA service. As regards those questions, Aureon's alternative rate calculations are just additional "black boxes."[165]

In short, Aureon's "Additional Cost Justification Methodology" and "Alternative Revenue Requirement Calculation" provide no more support for its current CEA rate than its flawed lease rate calculation.

F. The Commission's Affiliate Transaction Rules Preclude Aureon's Use of the "Circuit Method" for Allocating Costs

As a final matter, Aureon's reliance on the Commission's affiliate transaction rules to justify the reasonableness of its CEA rate is misplaced. Aureon's position is that its unregulated Network Division "can charge the Access Division whatever price [it] wants, including [a] price in excess of the recording value prescribed by the affiliate transaction rules," provided that the value the Access Division records on its books is less than the lower of the fair market value ("FMV") or fully distributed cost ("FDC") of CEA service.[166] Aureon then claims that its lease rate is justified because the lease expenses are "less than the fully distributed cost of the underlying assets used to provide the service."[167]

But as explained below, the Commission's affiliate transaction rules do not support Aureon's position. These rules require a reasonable, cost-causative allocation methodology (which Aureon has not implemented), and Aureon has utterly failed to demonstrate that its purported lease costs are lower than the FMV or FDC of the network facilities being leased to the Access Division.

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[165] *See* Rhinehart Supp. Rate Decl. ¶ 49.

[166] *See* Aureon Rebuttal at 35-37; Aureon Direct Case at 33-34.

[167] Aureon Rebuttal at 36.

1. The Commission's Affiliate Transaction and Cost Allocation Rules Require Carriers to Adopt Cost Allocation Methodologies that are Reasonable and that Eliminate Cross-Subsidization.

Before discussing the flaws in Aureon's analysis, a discussion of the structure and substance of the Commission's regulations in this area is warranted. To begin, the Commission's affiliate transaction rules in Section 32 provide:

> When services are purchased from or transferred from an affiliate to a carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded. Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the [Act and the] Commission rules and orders, and is not otherwise anti-competitive.

47 C.F.R. § 32.27(c)(2). In other words, carriers cannot record a value above the ceiling set by the lower of either the FMV or FDC of the applicable service. As discussed *infra*, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

Given Aureon's core argument that its CEA service is priced at less than FDC, it is also important to understand the Commission's views regarding fully distributed costs. In the *Joint Cost Order*, the Commission considered implementing a number of different fully distributed cost allocation methodologies. Ultimately, the Commission selected the "attributable cost method" of fully distributing costs, which seeks to directly assign costs—where possible—and then to allocate common costs on a cost-causative basis, including (in some instances) on a relative usage basis. *See* 47 C.F.R. § 64.901. In selecting this cost allocation methodology, the Commission emphasized that its goal was to select an "economically efficient" method that would "produce results as close as possible to the results of unregulated markets that are subject to a high degree of competition." *In re Separation of costs of regulated telephone service from costs of nonregulated activities*, 2 FCC Rcd. 1298, ¶ 111 (1987) ("*Joint Cost Order*"). It also noted that

the "proper purpose of [its] cost allocation rules is to make sure that all of the costs of nonregulated activities are removed from the rate base and allowable expenses for interstate regulated services." *Id.* ¶ 40. In particular, the Commission sought to avoid situations in which carriers would seek to recover the cost of imprudent investments from ratepayers, including through a carrier's under-forecasting of demand. *Id*. ¶¶ 169-70.

As implemented, the Commission's fully distributed costing rules prohibit carriers from "us[ing] services that are not competitive to subsidize services subject to competition," 47 C.F.R. § 64.901(c), and as for COE and CWF costs, they also require that:

> The allocation of central office equipment and outside plant investment costs between regulated and nonregulated activities shall be based upon the *relative regulated and nonregulated usage* of the investment during the calendar year when nonregulated usage is greatest in comparison to regulated usage during the three calendar years beginning with the calendar year during which the investment usage forecast is filed.

Id. § 64.901(b)(4) (emphasis added). These rules are "designed to discourage carriers from misallocating the costs of nonregulated activities and to ensure that ratepayers share in any efficiencies generated from joint use of the network by nonregulated activities." *Implementation of Section 254(k),* 12 FCC Rcd 6415, ¶ 3 (1997). Carriers are therefore barred from implementing an allocation methodology for COE and CWF costs that "falls outside the bounds of reasonableness." *Tenn. Cable Telecomms. v. BellSouth Telcomms., Inc.,* 15 FCC Rcd. 7513, ¶ 15 (2000).

Although carriers have some latitude in selecting a "usage" methodology, their chosen methodology is unreasonable if it is economically inefficient or encourages cross-subsidization—the aim of a carrier's methodology should be to "produce results as close as possible to the results of unregulated markets that are subject to a high degree of competition." *See supra*; *Joint Cost Order,* 2 FCC Rcd. 1298, ¶ 111. As for COE and CWF costs, the Commission has emphasized

that carriers should choose an allocation factor that is consistent with "economic principles of cost-causation." *See Video Cost Allocation NPRM*, 11 FCC Rcd. 17211, ¶¶ 24, 32-33 (1996). For example, "an allocation factor based on the relative use of total circuit capacity would not yield results reflecting cost causation if costs are related to the number of circuits used, irrespective of the capacity of those circuits." *Id*. ¶ 32.

Returning now to the intersection between the Commission's cost allocation and its affiliate transaction rules, an unreasonable method of cost allocation not only violates the Commission's FDC principles, but it may also violate the affiliate transaction rules. This is because an improper costing methodology will cause the regulated affiliate to include inflated costs in its rate base and revenue requirements, thereby recording a price in excess of FDC. *See supra*; 47 C.F.R. § 32.27(c). And in the Commission's NYNEX enforcement proceeding, this is precisely what occurred. NYNEX, which regularly transacted with its regulated affiliates, had assured the Commission that its "services and supplies [were] recorded at fully allocated costs." *In re New York Tel. Co.*, 5 FCC Rcd. 866, ¶ 14 (1990) ("*NYNEX*"). After an audit was performed, it was revealed that NYNEX's chosen methodology was anything *but* "fully allocated." Rather, NYNEX was using "market based" pricing with its affiliates, which pricing had "no discernible relationship to costs." *Id*. ¶ 18. The Commission accordingly found that NYNEX had violated the Commission's affiliate transaction rules, and it took a number of remedial actions to recover overcharges. *See id*. ¶¶ 30-36.

2. Aureon's Reliance on the Commission's Affiliate Transaction Rules is Misplaced.

Aureon attempts to justify its lease charge by relying on the Commission's affiliate transaction rules. For a host of reasons, that reliance is misplaced.

First, Aureon's reliance on the Commission's affiliate transaction rules[168] in no way excuses Aureon's failure to support its cost-of-service rate calculation. Nowhere in the Commission's regulations is there a provision that permits a dominant carrier to substitute for the rate calculation it *actually* used a different rate calculation based on the affiliate transaction rules.

Second, in asserting that the Network Division "can charge the Access Division whatever price [it] wants, including [a] price in excess of the recording value prescribed by the affiliate transaction rules,"[169] Aureon appears to be relying on language from the *NYNEX* decision.[170] However, what Aureon fails to mention is that the *NYNEX* decision goes one important step further, emphasizing that Section 32.27 prohibits nonregulated affiliates from "artificially inflating prices for goods and services" and therefore causing the regulated entity to record a price in excess of FMV or FDC.[171] In other words, Aureon's singular reliance on the affiliate transaction rules is misplaced, as Aureon's compliance with those rules is contingent upon the threshold requirement that its Access Division record a value below FMV or FDC; and as demonstrated below, Aureon has failed to comply with that requirement here, just as NYNEX failed to do when its nonregulated affiliate charged a price with "no discernible relationship to costs." *Id.* ¶ 18.

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[168] Aureon Rebuttal at 35-37.

[169] *Id.* at 36.

[170] *NYNEX*, ¶ 10 ("The affiliate transaction rules prescribe only the manner in which a carrier records on its books of account the charges for assets and services received from a nonregulated affiliate; the rules do not dictate directly the actual pricing of affiliate transactions. The nonregulated enterprise remains free to charge its affiliated carrier a price in excess of the recording value prescribed by the affiliate transaction rules.").

[171] *Id.*; *see also id.* ¶ 4 ("The ultimate result of this abusive arrangement is supra-normal profits flowing to the nonregulated affiliate at the expense of ratepayers.").

Third, as discussed above, the affiliate transaction rules place a ceiling of the lower of FMV or FDC,[172] and Aureon has wrongly asserted that it is impossible to measure FMV for the network facilities that it leases to the Access Division. In support of its position, Aureon asserts that "[t]here are no readily available rates for comparable service to develop a fair market value rate because the Network Division does not provide service to third parties to access the more than 2,700 mile CEA fiber network."[173] However, as AT&T demonstrated in its Opposition, the amount that CenturyLink would charge for a service comparable to Aureon's CEA service is substantially less, which supports the conclusion that the fair market value of the components supporting that service (i.e., the lease amount of the network facilities) is also substantially less than the lease charges that the Access Division is being charged.[174] That the FMV of the network facilities is less than Aureon's lease charge can also be seen by the fact that the rates that Aureon charges for its non-regulated network services are well below the lease rates that Aureon charges to the Access Division.[175] Further, the accompanying declarations of Messrs. Rhinehart and Albright also support that the conclusion that the FMV of the network capacity used to provide CEA service is much lower than the lease amounts that Aureon has been charging to its Access Division.[176]

Fourth, Aureon's reliance on the Commission's affiliate transactions rules is also flawed because Aureon's "Alternative Revenue Requirement Calculation" and "Additional Cost Justification Methodology" do not accurately measure the fully distributed costs of the network

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[172] *See* 47 C.F.R. § 32.27(c)(2) ("When services are purchased from or transferred from an affiliate to a carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded.").

[173] Aureon Direct Case at 34.

[174] *See* AT&T Opp. at 22-32; *see also* Habiak Rate Decl. ¶¶ 22-26.

[175] *See* Rhinehart Initial Decl. ¶¶ 12-13; Rhinehart Reply Decl. ¶¶ 28-29.

[176] *See* Rhinehart Second Supp. Rate Decl. ¶¶ 25-29; Albright Rate Decl. ¶¶ 8-10.

capacity that have been allocated to Aureon's CEA service. For that to be the case, the allocation methodology would need to be, among other things, cost-causative and economically efficient.[177] However, as shown above and discussed in the declarations of Mr. Rhinehart and Mr. Albright, that has not occurred.[178] Instead, Aureon has adopted an allocation approach that assigns significantly more cost to its CEA service than is justified. There is a difference between "fully distributed" and "more than fully distributed." Aureon has clearly crossed that line.

Finally, Aureon's use of the "Circuit" or "Path" methodology to allocate CWF costs runs counter to the Commission's cost allocation rules. As discussed above, those rules require CWF costs to be allocated on a "relative usage" basis in a manner consistent with "economic principles of cost-causation." *See Video Cost Allocation NPRM*, 11 FCC Rcd. 17211, ¶¶ 24, 32-33. Aureon's methodology is far from cost-causative, as discussed in the accompanying declarations of Messrs. Rhinehart and Albright.

III. Issue #3 -- The Relationship between the Commission's CLEC Benchmark Rate and Its Cost of Service Regulations

Aureon offers no valid arguments to support its claim that it is not subject to both the Commission's cost-of-service regulations (47 C.F.R § 61.38) and its CLEC benchmark rules (*id.* § 51.911(c) and 47 C.F.R. § 61.26)).[179]

First, Aureon's tortured argument (*see* Aureon Rebuttal at 61-62) that paragraph 26 of the *Liability Order* supports its position is entirely lacking in merit. That paragraph makes it abundantly clear that Aureon is subject to both the Commission's cost-of-service regulations in

[177] *See supra* Section II.F.1.

[178] See Section II.B above; Rhinehart Second Supp. Rate Decl. ¶¶ 17-20; Albright Rate Decl. ¶¶ 8-10.

[179] *See* Aureon Rebuttal at 60-74.

Section 61.38 and its rate cap and rate parity rules in Subpart J of Part 51, and that these rules are not inconsistent but rather "complement each other." *Liability Order*, ¶ 26. Aureon is, and has always been subject to, Section 61.38. *Id.* Then, in 2011, Aureon—"like all LECs"—became subject to the "additional obligations" in the rate cap and rate parity rules. *Id.* Those rules unambiguously provide that, "[b]eginning July 1, 2013, notwithstanding any other provision of the Commission's rules," Aureon—like all CLECs—must file rates "in accordance with the same procedures specified in § 61.26 of this chapter." 47 C.F.R. § 51.911(c). In short, the *Liability Order* provides that Aureon is subject to both the rate cap in Section 51.911(c) and the requirements of Section 61.38: "Aureon must comply with the [Section] 61.38 rules to support its rates at or below the [applicable rate] cap and therefore Section 61.38 is not superfluous. But if the rates it calculates exceed the rate caps, as they did in Aureon's June 2013 tariff filing, Aureon must lower them." *Liability Order* ¶ 26. (footnote omitted). Any other reading would violate the plain text of the Commission's regulations, and the clear statements in the *Liability Order*.

Second, there is no merit to Aureon's argument that requiring it to comply with the benchmark rules and the cost-of-service regulations produces a rate that is too low and "far below its actual costs."[180] To begin with, setting Aureon's rates based on the cost-of-service principles in Section 61.38 would—by definition—result in a rate above Aureon's actual costs. Nor do the Commission's benchmark rules result in confiscatory rates. To the contrary, such rules are

[180] *Id*. at 62.

necessary to constrain unreasonably *high* access rates set forth in tariffs.[181] In fact, in 2011, when the Commission adopted its transitional access service pricing rules and applied them to all LECs, including Aureon, the Commission explained that any carrier claiming that the Commission's reforms provided a "legally insufficient" recovery "would face a 'heavy burden' and need to demonstrate that the regime 'threatens [the carrier's] financial integrity or otherwise impedes [its] ability to attract capital'" Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund et al*., 26 FCC Rcd. 17663, ¶ 925 (2011) ("*Transformation Order*")(quoting *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 605 (1944) and *Ill. Bell Tel. Co. v. FCC*, 988 F.2d 1254, 1263 (D.C. Cir. 1993)). The Commission stated that, among other factors, a carrier would need to show that its access revenues as well as other revenues, including those from unregulated services, were constitutionally insufficient. *Transformation Order*, ¶¶ 926-32.

Aureon has not even attempted to make such a showing. It simply relies on entirely unsupported statements in its legal brief that, if Aureon must comply with the CLEC benchmark rules, "Aureon will not be able to recover its costs and will forced to shut down its CEA network."[182] The Commission cannot place any weight on such *ipse dixit* assertions. In fact, it is hard to see how Aureon could make such a showing, because no other CEA provider has been charging AT&T a per-minute rate on access stimulation traffic anywhere near as high as Aureon's current CEA rate. If Aureon cannot recover its reasonably incurred costs at the rates required

[181] *See Seventh Report and Order*, ¶¶ 3, 82-87. In 2011, the Commission determined that access rates ultimately would go to bill-and-keep, *Transformation Order*, ¶ 736, but it adopted a multi-year transition, including the rate cap and rate parity rules, to continue certain tariffed access charges for an interim period so as to strike an "appropriate balance" between consumers and carriers. *Id.* ¶ 801. In doing so, the Commission concluded in 2011 that rates above the caps were, by definition, unjust and unreasonable, *id.* ¶¶ 798-805, 809-10, and it also refused to adopt a "revenue-neutral approach" in which all losses of access revenue could be recovered via other regulatory recovery mechanisms. *Id.* ¶ 924.

[182] Aureon Rebuttal at 72.

under the Commission's regulations, it is because Aureon—unlike other LECs and CEA providers— is not operating efficiently.

Third, and finally, Aureon's assertion that it has set forth facts justifying a waiver of the Commission's pricing rules (*see* Aureon Rebuttal at 71-75) is absurd. Aureon does not come close to showing that a waiver is warranted. As AT&T has explained, even though Aureon's CEA service routes calls to far less than a million end users (*see id.* at 4), and about 1300 other LECs serve the other hundreds of millions of end users in the United States, Aureon alone is currently responsible for billing about *12 percent* of AT&T's nationwide terminating switched access expense. AT&T Formal Compl. ¶ 8. Granting Aureon a waiver of the Commission's pricing rules so that Aureon can continue to charge a grossly excessive CEA rate (accounting for a massively disproportionate share of the nation's terminating switched access charges) is simply not in the public interest, and Aureon has not met the "good cause" standard for a waiver.

CONCLUSION

For the reasons set forth above and in its Opposition, the Commission should find Aureon's revised rate to be unreasonable and direct Aureon to file: (a) a new rate correcting the errors identified below; and (b) refund the difference between that corrected rate and its current rate of $0.00576/min.

Respectfully submitted,

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Dated: June 25, 2018

Counsel for AT&T Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2018, I caused a copy of the foregoing AT&T Services, Inc.'s Surrebuttal in Support of Opposition to Direct Case of Iowa Network Access Division d/b/a Aureon Network Services to be served via email on the following:

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	**WC Docket No. 18-60**
IOWA NETWORK SERVICES, INC. **Tariff F.C.C. No. 1**	**Transmittal No. 36**

SECOND SUPPLEMENTAL RATE DECLARATION OF DANIEL P. RHINEHART IN SUPPORT OF AT&T SERVICES, INC'S SURREBUTTAL IN SUPPORT OF ITS OPPOSITION TO THE DIRECT CASE OF IOWA NETWORK ACCESS DIVISION d/b/a AUREON NETWORK SERVICES

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc. ("AT&T"), and my current job title is Director - Regulatory. As detailed in my declaration in support of AT&T's Petition to Reject or Suspend the Tariff Filing of Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"), dated February 22, 2018, I am very familiar with the manner in which rates are calculated by Local Exchange Carriers ("LECs") that are regulated on a rate of return basis.[1] I am also very familiar with the tariff filings made by Aureon, having reviewed Aureon's previous bi-annual tariff filings and supporting documentation dating back to 2004 and having submitted three separate declarations in support of AT&T's formal complaint challenging Aureon's prior rates for Centralized Equal Access ("CEA") Service (i.e., *AT&T Corp.* v. *Iowa Network Services, Inc. d/b/a Aureon Network Services*, FCC 17-148, EB-17-MD-001 (2017)).[2]

[1] *See* Declaration of Daniel P. Rhinehart ("Rhinehart Rate Decl."), ¶ 2 (dated February 26, 2018); *see also* Rhinehart Supp. Rate Declaration ("Rhinehart Supp. Rate Decl."), ¶ 1 (dated May 10, 2018).

[2] The public versions of those declarations were submitted as Exhibits A, B, and C to my Rate Declaration. Aureon has now consented to AT&T using the "Highly Confidential" versions of

2. The purpose of this Second Supplemental Rate Declaration is to address certain points raised by Aureon in its Consolidated Rebuttal regarding the calculation of its current CEA rate, particularly as it relates to Aureon's allocation of Cable and Wire Facilities ("CWF") costs. Although I have not been provided access to the Confidential Version of Aureon's Consolidated Rebuttal, I am fully familiar with the methodology that Aureon has used in allocating its CWF costs as well as the arguments it has presented in support of its approach.

3. As shown below, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

4. As Aureon's work papers, the public version of its Rebuttal, and the testimony of its network witness Frank Hilton make clear, Aureon's CEA traffic is **[[BEGIN CONFIDENTIAL]]** [redacted]

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those declarations in this proceeding. Copies of those declarations are Exhibits to AT&T's May 10 Opposition and have been designated as Exhibit 1 ("Initial Declaration"), Exhibit 2 ("Reply Declaration") and Exhibit 3 ("Supplemental Declaration").

[3] Aureon Rebuttal at 44; Second Supplemental Declaration of Frank Hilton (AT&T Complaint case), ¶ 3; *see also* Declaration of Carl Albright, Jr. ("Albright Decl."), ¶ 5. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** *See* pages 2 of AT&T Exs, 6 -11.

[redacted] **[[END CONFIDENTIAL]]** the lease amount that it is being charged should reflect the wholesale price that a provider of service would pay for sufficient backbone capacity to support the provision of its service. An efficient provider would not acquire such capacity on a one-at-a-time stand-alone DS-1 basis, but rather on a T-3 or higher facility basis. Aureon's methodology, by contrast, assigns CWF costs as if the Access Division was purchasing network capacity as though individual DS-1 circuits were riding on dedicated fiber pairs (which they are not). While that approach may be beneficial to Aureon's other non-regulated transport services, it results in a much higher CEA rate than an independent provider would charge in a competitive market and is thus not defensible from an economic perspective.

6. Finally, that Aureon's CWF cost allocation approach is defective is demonstrated by pricing data relating to the mileage component charged in connection with the provision of DS-1 and DS-3 service. If Aureon's approach accurately reflected the costs of transporting DS-1 traffic, one would expect that the per-mile transport rates for DS-1 and DS-3 service would be approximately equal. But that is not the case. As can be seen from the tariff rates of various carriers, the per-mile transport charges for DS-1 service are much lower than the per-mile transport

charges for DS-3 service. That difference is not the result of differences in the CWF costs of the fiber pairs used to transport the traffic. Rather, it is due to the fact that the CWF costs associated with the fiber pair over which a single DS-1 circuit is transported are shared with up to 27 other DS-1 circuits. By contrast, the CWF costs of the fiber pair used to transport a single dedicated DS-3 circuit traffic must be borne entirely by that DS-3 circuit. Hence, the significant difference in the per-mile transport rate charges.

7. In sum, the evidence overwhelmingly supports use of the "System" method of allocating CWF costs, which requires that Aureon's CWF costs be allocated on a T-3 facility basis as opposed to a DS-1 circuit basis.

The Costs of Muxing and De-Muxing of DS-1 Circuits are Not CWF Costs

8. The circuit cost calculation data that Aureon has presented in support of its allocation of COE costs clearly shows that **[[BEGIN CONFIDENTIAL]]** [redacted]

[4] *See* AT&T Exs. 6-11 (Circuit cost calculation documents).

[redacted]

[5] *See* page 1 of AT&T Exs. 6 to 11.

[6] *See id*. at 2-3.

[7] *See id.* at 3. Further detail as to these cost calculations is set forth on the succeeding pages of these Exhibits.

[8] *See id.* at 3.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[redacted] **[[END CONFIDENTIAL]]**

Aureon's DS-1 Traffic is Transported at a T-3 Facility or Higher Level

12. Aureon has publicly stated that "[m]uch of the SONET ring transport equipment in Aureon's fiber network is only equipped with DS-3 level ports, and thus, it is necessary for Aureon

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[12] *Id.*

[13] *Id.*

[14] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[15] *See* AT&T Exs. 6 to 11 at 1.

[16] *Id.*

[17] *See* Rhinehart Supp. Decl., ¶ 22.

to assign DS-1 **circuits** to a DS-3 **circuit** for transport."[18] Further, the **[[BEGIN CONFIDENTIAL]]** [redacted]

[18] Consolidated Rebuttal of Iowa Network Access Division D/B/A Aureon Network Services, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, at 44 (May 17, 2018) ("Aureon Rebuttal") (emphasis added).

[19] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[redacted]

[[END CONFIDENTIAL]]

Aueron's Method of Allocating CWF Costs Significantly Inflates the CWF Costs Assigned to CEA service.

16. Aureon's method of allocating CWF costs **[[BEGIN CONFIDENTIAL]]** [redacted]

[redacted]

[20] *See* pages 1 of AT&T Exs. 6-11.

[redacted] **[[END CONFIDENTIAL]]**

19. As described in the Declaration of Carl Albright, Jr., high capacity fiber optic systems require the use of only four fiber strands to transport the traffic assigned to that particular fiber optic system.[22] As Mr. Albright further pointed out, an OC-3 facility, which is a fairly common SONET system, is capable of carrying up to three DS-3s and each DS-3 is capable of carrying up to 28 muxed DS-1 circuits.[23]

20. Now let's assume that Aureon operates its network on an OC-3 level basis,[24] and that a single OC-3 system on Aureon's network is used to transport one dedicated DS-3 circuit and

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[21] For example, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[22] Albright Decl., ¶¶ 7-8.

[23] *Id.*

[24] Based on the available data, it appears that OC-3 may be the lowest bit rate at which Aureon's fiber network is operated, as Aureon advertises service availability at bit rates far above that level (e.g., OC-12, OC-48, OC-192 and 10 Gig ethernet). *See* Att. A to Albright Decl.

one DS-3 subdivided into 23 DS-1 circuits,[25] leaving five spare DS-1 circuits and one spare DS-3. Let's also assume these circuits traverse a ring that is 500 miles in circumference with an average revenue requirement per mile of about $20, resulting in an average circuit cost of $10,000.[26] Under these conditions, Aureon's allocation methodology results in **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** As both operational DS-3s are on a single OC-3 system, it is important to understand that the single dedicated DS-3 circuit and the 23 DS-1 circuits function on the same set of four strands of fiber. Consequently, there is no cost justification for the differential treatment. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

22. As Mr. Albright further discusses in his declaration, the above-described configuration is most properly understood on a system basis and not on a circuit by circuit basis. Specifically, Mr. Albright points to the NECA Reporting Guideline attached to Aureon's Consolidated Rebuttal[27] and concludes that the appropriate method for attribution of CWF costs

[25] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** *See* supra ¶ 10.

[26] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** *See* Table A below.

[27] Aureon Rebuttal, Exhibit G, NECA Reporting Guideline 4.19.

is the "System Method" as presented in Exhibit C (page 8 of 10) of the NECA Reporting Guideline. I completely agree with Mr. Albright's conclusion in that regard.

23. As I have pointed out in my prior declarations, Aureon's improper allocation methodology has a profound effect on its allocation of fiber transport revenue requirements to its CEA service.[28] The following tables are based on **[[BEGIN CONFIDENTIAL]]** [redacted]

[redacted]

[28] See Rhinehart Supp. Decl. ¶¶ 16-32; Rhinehart Rate Decl. ¶ 20; Rhinehart Supp. Rate Decl. ¶¶ 26-35.

[29] *See* **[[BEGIN CONFIDENTIAL]]** [redacted] **[[BEGIN CONFIDENTIAL]]**

[redacted]

[redacted] **[[END CONFIDENTIAL]]**

Pricing Data Relating to DS-1 and DS-3 Service Does NOT Support Aureon's CWF Cost Allocation Approach

25. That Aureon's CWF cost allocation approach is defective is also demonstrated by pricing data relating to the mileage component charged in connection with the provision of DS-1 and DS-3 service.

26. If Aureon's approach accurately reflected the costs of transporting DS-1 traffic, one would expect that the per-mile transport rates for DS-1 and DS-3 service to be approximately equal

and for this to be reflected in carrier tariffs. But that is not the case. As shown below, the rates for Special Access Channel Mileage set forth in the NECA Tariff and in AT&T interconnection agreements show that there is a significant difference between the per mile transport rate for DS-1 service and the per mile transport rate for DS-3 service.

27. Take, for example, the NECA Rate Band 10 rates for Special Access Channel Mileage (per airline mile). For DS-3 service, the rate is $59.68 per mile but for DS-1 service the rate is $6.85 per mile. In other words, the rate differential is 8.7 to 1.[30]

28. The same relationship can be seen with respect to the interconnection rates charged by AT&T's LECs for interoffice transport. The following table shows the mileage rates for different states. While the ratios vary, none of them are at a 1 to 1 level, and in fact most are higher than the NECA differential discussed above.[31]

[30] *See* NECA F.C.C. Tariff No. 5, effective 5/1/18, Section 17.3.8(B)(1) page 17-26.3 for 44.736 Mbps High Capacity Service (a.k.a.. DS-3) and page 17-26.2 for 1.544 Mbps service (a.k.a. DS-1). Rate Band 10 was selected for convenience only. The ratio of DS-3 to DS-1 channel mileage rates is consistent across all NECA Rate Bands.

[31] Rates in Table C vary from state to state, reflecting the fact that AT&T ILEC interconnection rates were adjudicated in different states at different times using differing costing methods. None of those costing methods, however, resulted in a 1 to 1 ratio.

Table C – Interoffice Unbundled Dedicated Transport - Mileage Rates [32]

State	PDF Page	DS-3 Per Mile	DS-1 Per Mile	DS-3 to DS-1 Ratio	Note
Alabama	269	$4.09	$0.18	22.7	
Arkansas	286	$118.00	$16.80	7.0	Additional Mile Rate
California	319, 320	$4.65	$0.25	18.6	
Florida	377	$3.87	$0.1856	20.9	
Georgia	403	$2.63	$0.1199	21.9	
Illinois	421	$29.81	$1.88	15.9	
Indiana	450, 451	$28.62	$1.65	17.3	
Kansas	488	$17.51	$0.72	24.3	Additional Mile, Suburban
Kentucky	523	$4.97	$0.23	21.6	
Louisiana	545	$6.04	$0.2652	22.8	
Michigan	561, 562	$3.84	$0.77	5.0	Per Mile, Zone 2
Mississippi	630, 631	$4.76	$0.201	23.7	
Missouri	592, 593	$304.75	$8.75	34.8	Additional Mile, Suburban
Nevada	674	$35.72	$1.84	19.4	
North Carolina	653	$4.44	$0.1938	22.9	
Ohio	751	$21.61	$1.64	13.2	
Oklahoma	781	$274.35	$14.17	19.4	Additional Mile, Suburban
South Carolina	815	$8.02	$0.3415	23.5	
Tennessee	846, 847	$2.34	$0.3562	6.6	
Texas	867	$3.2041	$0.1093	29.3	Additional Mile, Suburban
Wisconsin	895	$33.29	$2.19	15.2	

29. As can be seen in Table C above, the per mile rates that AT&T ILECs charge for DS-1 service are much lower than the per mile rates charged for DS-3 service. While the exact ratio varies by AT&T operating company, the per mile rates for DS- 3 service are generally between 5 and 35 times higher than the per mile rates for DS-1 service. This rate differential is

[32] *See* AT&T 21-State Generic Interconnection Agreement, at https://clec.att.com/clec/shell.cfm?section=115 or https://clec.att.com/clec_documents/unrestr/interconnect/multi/21ST%20ICA.pdf

largely attributable to the fact that the CWF costs of transporting a single DS-1 circuit over a backbone fiber network can be shared with other DS-1 circuits.

Conclusion

30. As can be seen from the foregoing, Aureon's CWF cost allocation cannot be justified. It is not consistent with the realities of Aureon's network, nor does it result in an economically reasonable allocation of costs, which is the guiding principle in the NECA Guideline. *See* Aureon Rebuttal, Exhibit G, NECA Reporting Guideline 4.19 at 2. In addition, it is contradicted by the market prices charged for DS-1 and DS-3 service.

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed June 15, 2018.

Daniel P. Rhinehart

PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **Iowa Network Access Division** **Tariff FCC No. 1**	**WC Docket No. 18-60** **Transmittal No. 36**

DECLARATION OF CARL ALBRIGHT, JR. IN SUPPORT OF AT&T SERVICES, INC'S SURREBUTTAL IN SUPPORT OF ITS OPPOSITION TO DIRECT CASE OF IOWA NETWORK ACCESS DIVISION d/b/a AUREON NETWORK SERVICES

I, Carl Albright, Jr., of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc. ("AT&T"). My job title is Area Manager – Regulatory Relations and I work in the Integrated Planning and Operations department. In that position, I provide technical support, and when necessary, technical written and oral testimony before various commissions in arbitrations and dispute resolutions. I have filed testimony and/or appeared in regulatory proceedings on matters involving network design and network operations in numerous cases at state regulatory commissions, including the Arkansas Public Service Commission, California Public Utilities Commission, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Michigan Public Service Commission, the Public Utility Commission of Ohio, Oklahoma Corporation Commission, Public Service Commission of South Carolina and the Public Utility Commission of Texas.

2. I have been employed by AT&T and its predecessors for 39 years. My entire career has been in Network organizations starting with Network Distribution in outside installation, repair, and maintenance, after which I worked in Network Operations in the Central Office Special Services group. For the next five years, I supported Network Operations as a technical instructor for AT&T developing and presenting broadband transport courses addressing the fundamentals of

digital transmission and fiber optics as well as more advanced subjects regarding, by way of example, Synchronous Optical Network ("SONET") technology. I next worked with SBC Wireless (now called AT&T Mobility) for 4 years managing the development, implementation, measurement and evaluation of technical training for the AT&T Mobility Network Operation's organization. I also served for 5 years with the U-verse Network Operations Center developing and providing Methods and Procedures for test and turn up of the U-verse network. I have a Bachelor's Degree in Management from Lamar University in Beaumont, TX.

3. Some of the training courses I have developed have related to the installation, maintenance and operation of fiber optic electronic systems and SONET fundamentals for services operating at the OC-3, OC-12 and OC-48 levels. I also have developed and presented courses on (a) digital transmission fundamentals, (b) DS-1 circuit testing and maintenance, (c) fiber optic fundamentals, (d) SONET overview, (e) DML 3x50 (asynchronous), (f) Alcatel 3003 M13 (asynchronous), (g) Fox Telco (asynchronous), (h) AT&T DDM-2000 OC-3/OC-12 (SONET), (i) AT&T DDM-2000 OC-48 (SONET), (j) Fujitsu FLM-VT6 (SONET), (k) Fujitsu FLM-150/600 (SONET), (l) Fujitsu FLM-2400 (SONET), (m) Rockwall 3-1 DCS (Digital Cross Connect System), (n) Rockwall 3-3 DCS, (o) IDST 1-0 DCS, (p) TITAN 5500 DCS (SONET), (q) wireless fundamentals for new technicians, (r) DS-1 fundamentals for Wireless, and (s) fundamentals of cell site engineering for wireless. In addition, I have supported AT&T's U-verse Network Operations Center in developing methods and procedures for turn up, provisioning, testing and maintenance of the various network components in the U-verse network.

4. In preparing this declaration, I have reviewed portions of the public version of Aureon's Consolidated Rebuttal of Iowa Network Access Division D/B/A Aureon Network Services ("Consolidated Rebuttal"). In that connection, I noted that Aureon has taken the position

(at page 44) that its allocation of Cable and Wire Facilities ("CWF") costs was proper. I also reviewed NECA Reporting Guideline 4.19 (Ex. G to the Consolidated Rebuttal), and Aureon's public website.[1]

5. Based on the descriptive material on Aureon's website and the description of Aureon's network in the public version of its Consolidated Rebuttal, Aureon's fiber optic network appears to be a modern and sophisticated system with significant high capacity capabilities. Aureon publicly states that its fiber network has the capability of delivering a wide variety of services, including transport services at DS-1, DS-3, OC-3, OC-12, OC-48 and OC-192 levels, ethernet service of up to 100 Gbps and high-speed internet services. Based on Aureon's public statements in its Consolidated Rebuttal, DS-1 circuits are transported on Aureon's fiber network on systems no smaller than one DS-3 system (an OC-1 system is the optical equivalent of a DS-3 system).[2]

6. I am very familiar with the SONET systems that Aureon uses in its network. SONET is a standardized optical transport communication protocol that was developed to allow all equipment on a fiber network to communicate regardless of vendor.[3] Under this protocol, all

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[1] *See* Attachments A and B hereto. These exhibits are drawn from Aureon's promotional materials, which can be found online at https://www.aureon.com/services/technology/data-network and https://www.rippleeffectworks.org/filesimages/aureon_fiber_optic_network_map_0.pdf.

[2] A DS-3 system can carry up to 28 DS-1 circuits. The provisioning of the DS-1 circuits assigned to a DS-3 system is done in two stages. At the originating end, the DS-1 circuits are multiplexed in groups of 4 DS-1 circuits into DS-2 payloads, then 7 DS-2 payloads are multiplexed into the DS-3 system. This is commonly referred to as M13 Multiplexing. At the terminating end, the DS-3 system is de-multiplexed to 7 DS-2 payloads, then each DS-2 payload is further de-multiplexed into 4 DS-1 circuits.

[3] Early fiber transmission systems were called "asynchronous," meaning they used their own timing, overhead for system monitoring, maintenance and communications and proprietary language for communications. This meant a carrier was limited to a single vendor to perform turn up, testing, alarming, maintenance and provisioning for that fiber system.

DS-3 or higher level systems are set at a SONET rate of 51.84 Mbps with a standard language, functional test, turn up, provisioning, alarming and maintenance overhead. As a result, different vendor equipment can be used on either end of a transmission path. This has permitted competitive carriers to connect to the Public Switched Telephone Network ("PSTN") using the most economical method for their own needs, while the PSTN incumbent can still utilize the equipment on its existing network. In addition, SONET systems provide features that allow more flexibility for add/drop multiplexing as well as self-healing ring architectures.

7. A high level overview of SONET technology can be found in Attachment C, which is attached to my declaration.[4] A SONET fiber optic system requires two pairs of optical fibers to operate effectively. One pair is the primary transmit and receive pair: the other provides protection and, as such, is the redundant transmit and receive pair. This is true regardless of the size of the fiber optic system deployed, i.e., OC-3, OC-12, OC-48, etc. Further, no matter the size of the fiber system deployed, only 4 fibers are used per fiber optic system. Therefore, it is the cost of those four fibers that should be considered in allocating CWF costs to the traffic being transported over the particular fiber optic system being used. Attachment D to this declaration provides a simple diagram of an OC-3 fiber optic system.

8. Regardless of the size of the fiber optic system deployed, it is the electronics on the ends of the fiber pairs (i.e., the central office equipment or "COE") that determines the optical signals that transmit information over the fiber optic system. This equipment includes the multiplexing equipment needed to mux and de-mux the traffic, as well as the other electronic equipment needed to power the fiber optical system. The cost of that equipment has nothing to do

[4] *See* Attachment C hereto. The material in this exhibit was drawn from the following website: https://www.pcmag.com/encyclopedia/term/51740/sonet.

with the CWF costs, as the CWF costs are largely comprised of the fiber pairs used to transport the traffic from one end of the fiber optic system to the other end. Fiber pair costs are the same regardless of the fiber optic system used. Thus, if we assume that Aureon's fiber network operates primarily at an OC-3 level (as depicted in Attachment D hereto), that system would require no more than four strands of fiber whether or not that OC-3 system was serving three DS-3 payloads each consisting of a single DS-3 circuit, or three DS-3 payloads each consisting of up to 28 DS-1 circuits. Further, to the extent we were to assume that Aureon's fiber network operated primarily at a DS-3 system level, the same observation would apply. That DS-3 system would require no more than four fiber strands to operate regardless of payload. Consequently, no fiber optic system should be assigned more than the CWF costs of four fiber strands, i.e., two fiber pairs.

9. As previously noted, I have reviewed NECA Reporting Guideline 4.19 and based on Aureon's own description of its fiber network, Exhibit C to the NECA Guideline (the "System Method" of cost allocation) is the appropriate way to allocate Aureon's CWF costs. That method provides for an equal allocation of CWF costs among DS-3 systems, with the CWF cost allocated to a DS-3 system being borne by the DS-3 payload using that system regardless of the nature of that payload. Thus, to the extent that the payload of the DS-3 system is a single DS-3 circuit, the cost allocated to that system would be borne entirely by that single DS-3 circuit. If, on the other hand, the DS-3 payload consisted of 28 DS-1 circuits, the cost allocated to that DS-3 system would be shared by those 28 DS-1 circuits.

10. Exhibit B to the NECA Guideline (the "Path" or "Circuit Method" of cost allocation), is not an appropriate way to allocate Aureon's CWF costs. In fact, it would severely distort that cost allocation. For example, if the Circuit Method in Exhibit B were used to allocate the CWF costs associated with the network configuration depicted on Attachment D hereto (i.e.,

an OC-3 system handling three separate DS-3 systems), the DS-3 system with a payload consisting of a single DS-3 circuit would bear 1/57th of the CWF costs of the OC-3 fiber facility (less than 2%), while the two DS-3 systems each with payloads of 28 DS-1 circuits would bear 56/57th of the CWF costs (more than 98%) even though those two DS-3 systems were only using two thirds of the OC-3 system's capacity of three DS-3 systems. There is no economic or engineering justification for that division of the CWF costs of that OC-3 fiber facility.

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed June 15, 2018.

Carl Albright, Jr.

ATTACHMENT A

to Albright Declaration

https://www.aureon.com/services/technology/data-network

May 30, 2018

CONNECT WITH A RELIABLE INTERNET SERVICES PROVIDER

A slow or unreliable network can hinder your ability to serve customers and cause frustration for you and your employees. That's a big problem. You need an Internet Service Provider that provides the bandwidth your business needs to safely and efficiently deliver data, improve communications, and help grow your business.
As an Internet Service Provider and a Business Internet Provider, Aureon offers high-speed, reliable, and redundant internet solutions and data services. With more than 5,500 miles, the Aureon Fiber Optic Network delivers unmatched reliability throughout Iowa. We are also a proud member of INDATEL Services, a premier nationwide facility-based Ethernet services provider. This partnership enables us to deliver Ethernet connectivity via 100,000+ fiber route miles of fiber deployed across the U.S.

BUSINESS INTERNET PROVIDER

Access to the internet is an essential function for most businesses–providing instant access to the information needed for research, email, instant messaging, e-commerce, procurement, competitive analysis, and business applications.
Aureon Technology offers high-speed, high-performance, and dedicated access to the Internet, with additional services and features that can be tailored to meet the needs of your business.

Our redundant statewide network and out-of-state partnerships allow us to provide the most reliable Direct Internet Access available. If one of our providers has a network issue, we quickly route traffic to our other providers at our redundant locations to ensure your organization has the access it needs.

DATA NETWORK

Understanding your organization's data network and communications technologies is no easy feat. Aureon can help you reduce complexities and simplify day-to-day operations. Our expertise and solutions help deliver voice, video, and data securely and efficiently. We provide scalable and redundant solutions to help your business grow and keep your employees productive.

Software-Defined Wide Area Network (SD-WAN) -

Aureon takes SD-WAN to a whole new level with Aureon Cloud WAN managed services. The Aureon Cloud WAN helps businesses improve application performance, expand internet connectivity and reliability, and enhance network security. In addition, offering SD-WAN as a managed service enables businesses to simplify IT and network operations allowing them to focus on other IT projects and priorities.

Multi-Protocol Label Switching (MPLS) –

Allows your business to prioritize the voice, video, and data traffic on a converged communications network.

Fiber –

The Aureon Fiber Optic Network provides the speed, bandwidth, reliability, and performance to support your business communications with redundancy, symmetry, and reliability.

SIP Session (Trunking) –

A cost-effective solution for businesses seeking the benefits of converging voice and data traffic into one network.

IP Meshed Wide Area Networks (WAN) -

Aureon's IP meshed WAN offers an efficient and secure data network provided through multiple access and configuration options.

T-1 –

T-1 and integrated T-1 services offer beneficial support for businesses with large data needs, a high-volume of voice traffic, no access to Ethernet options, or dedicated transport for your business voice and data.

Ethernet Over Copper (EoC) -

A fast, secure, and affordable alternative to T-1 or fiber. Aureon's EoC solution provides Ethernet speeds up to 30+ Mpbs.

We deliver multiple data networking services that are scalable to adjust and grow with your business. Whether your employees are in one building or multiple locations around the world, Aureon's data networking services can ensure your connectivity needs are met with reliable performance.

AUREON FIBER OPTIC NETWORK

Does your organization have the speed and bandwidth to meet its needs today and in the future? Regardless, you need a network that is fast, reliable, and scalable, to stay connected and productive. The Aureon Fiber Optic Network offers:

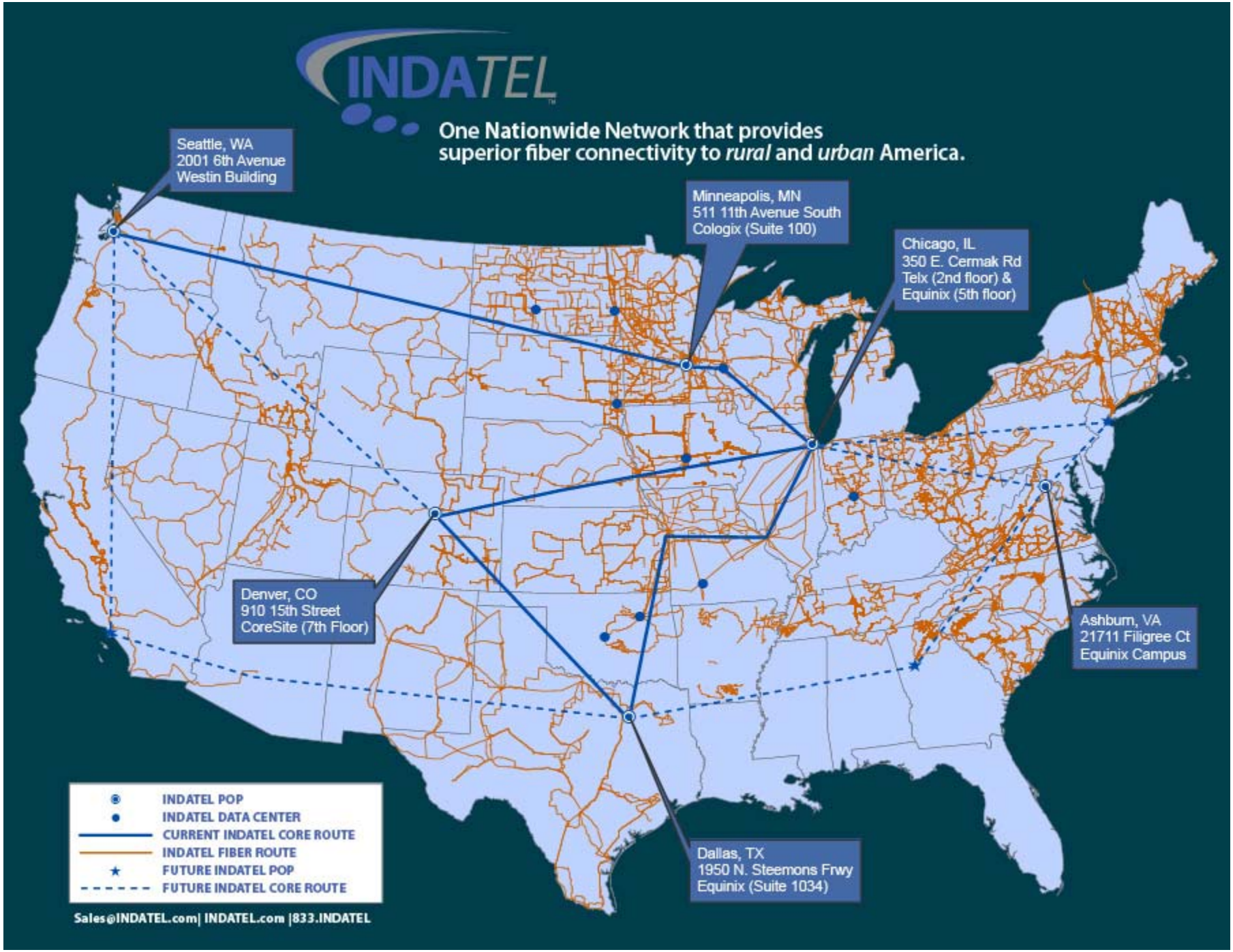
- Speed: Symmetrical connections up to 100 Gbps.
- Scalability: Fast and easy to scale as your business grows.
- Reliability: Self-healing architecture for redundancy and protection.

The Aureon Fiber Optic Network is monitored and supported 24/7 by our network operations experts to ensure your organization has the access it needs all the time. We offer the bandwidth and services to support all your communications needs to remain competitive.

The Aureon Fiber Optic Network

NATIONWIDE NETWORK

Aureon is a partner with INDATEL Services and can leverage the nationwide INDATEL network as one of several options to deliver services outside the state of Iowa. INDATEL allows us to participate in the Rural Ethernet Exchange, so our fiber is part of **100,000+ fiber route miles** to provide Ethernet connectivity to rural and metropolitan areas across the country. We also use various channel partners to expand our coverage and Competitive Local Exchange Carriers (CLEC) footprint outside the state.


INDATEL
One Nationwide Network that provides superior fiber connectivity to *rural* and *urban* America.
Seattle, WA
2001 6th Avenue
Westin Building
Minneapolis, MN
511 11th Avenue South
Cologix (Suite 100)
Chicago, IL
350 E. Cermak Rd
Telx (2nd floor) &
Equinix (5th floor)
Denver, CO
910 15th Street
CoreSite (7th Floor)
Ashburn, VA
21711 Filigree Ct
Equinix Campus
Dallas, TX
1950 N. Steemons Frwy
Equinix (Suite 1034)
INDATEL POP
INDATEL DATA CENTER
CURRENT INDATEL CORE ROUTE
INDATEL FIBER ROUTE
FUTURE INDATEL POP
FUTURE INDATEL CORE ROUTE
Sales@INDATEL.com| INDATEL.com |833.INDATEL

Resources

Aureon Honored with 2018 Channel Partners 360° Award

April 18, 2018

Channel Partners is pleased to announce that Aureon has been selected as a winner of the 2018 Channel Partners 360° Business Value Awards for the third consecutive year....

How Managed IT Services Benefits The Medical Field

February 28, 2018

Midwest Nephrology Consultants, a care clinic that serves those with kidney disorders and diseases in the Kansas City area, realized a need for help with their technology when

ATTACHMENT B

to Albright Declaration

AUREON FIBER OPTIC NETWORK

Does your business have the speed and bandwidth to meet its needs today and tomorrow? Aureon™ offers a state-of-the-art fiber optic network with the speed, bandwidth, reliability, and performance to support all your business communication needs. Let Aureon keep you connected, so you can put your focus where it belongs—on your business.

The Aureon Fiber Optic Network is a part of ***more than 5,500 miles of Iowa-owned, carrier-grade, redundant, self-healing, and symmetrical network delivering unmatched reliability with multiple points-of-presence throughout the state***. Every new mile we install is engineered and continuously monitored to provide industry-leading reliability and performance.

The self-healing Aureon Fiber Optic Network is equipped with SONET ring technology, which offers redundancy and protection from downtime for TDM transport.

Our packet delivery network provides connectivity to four national Tier 1 internet backbone providers, eliminating your need to connect to alternate providers. In addition, it's symmetrical so it provides equal upload and download speeds to move large amounts of data easily and securely. ***All of it is monitored and supported 24/7 year-round by our network operations experts.***

The extensive Aureon Fiber Optic Network has an incredibly wide bandwidth capacity and is continuously updated with state-of-the-art technology. Your business benefits by receiving complete end-to-end connectivity through only one point of contact, rather than third-party suppliers who may be unfamiliar to you.

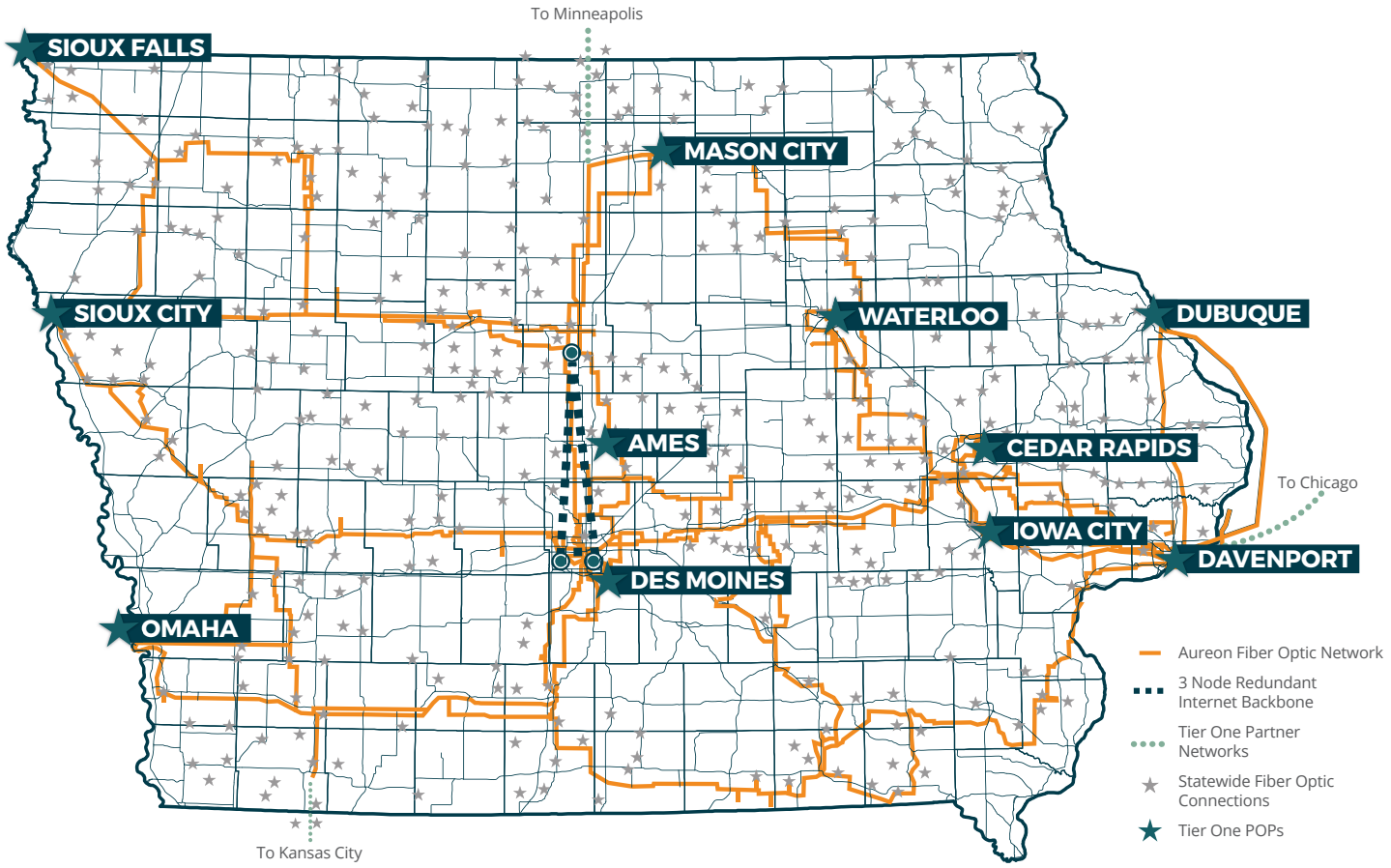
Aureon also offers flexible, reliable, and scalable services that support your business, including:

- Ethernet Transport (1 Mbps to 100 Gbps).
- TDM Transport (DS1, DS3, OC3, OC12, OC48, OC192).
- Internet Access (1 Mbps to 100 Gbps Ethernet).
- MPLS.
- Wavelength Services.

We have the bandwidth and services to support all your communications needs to remain competitive, today and in the future.

Aureon is also a member of INDATEL®, a national telecommunications services organization comprised of rural statewide fiber optic network providers who deliver best-in-class, cost-effective broadband transport connectivity across the country. Through INDATEL, ***Aureon is able to deliver Ethernet connectivity via 90,000 miles of fiber deployed across the U.S.*** with a strong focus on serving rural and underserved markets.

AUREON FIBER OPTIC NETWORK MAP



*For more information on the benefits of the **Aureon Fiber Optic Network,** call 888-387-5670 or visit AureonTechnology.com.*

ATTACHMENT C

to Albright Declaration

https://www.pcmag.com/encyclopedia/term/51740/sonet

Definition of: SONET

SONET

(**S**ynchronous **O**ptical **NET**work) A fiber-optic transmission system for high-speed digital traffic. Employed by telephone companies and common carriers, speeds range from 51 Mbps to 40 Gbps.

SONET is an intelligent system that provides advanced network management and a standard optical interface. Specified in the Broadband ISDN (B-ISDN) standard, SONET backbones are widely used to aggregate T1 and T3 lines. The European counterpart to SONET is the Synchronous Digital Hierarchy, and the term "SONET/SDH" is widely used when referring to SONET.

Self Healing
SONET can be built in a self-healing ring architecture that uses two or more transmission paths between nodes. In the event one path fails, traffic can be rerouted (see SONET ring).

TDM Multiplexing
SONET uses time division multiplexing (TDM) to send multiple data streams simultaneously. Its smallest increment of provisioning is VT-1.5, which provides 1.7 Mbps of bandwidth. The next increment, STS-1, jumps to 51.84 Mbps. Any data stream that does not fill that channel goes wasted.

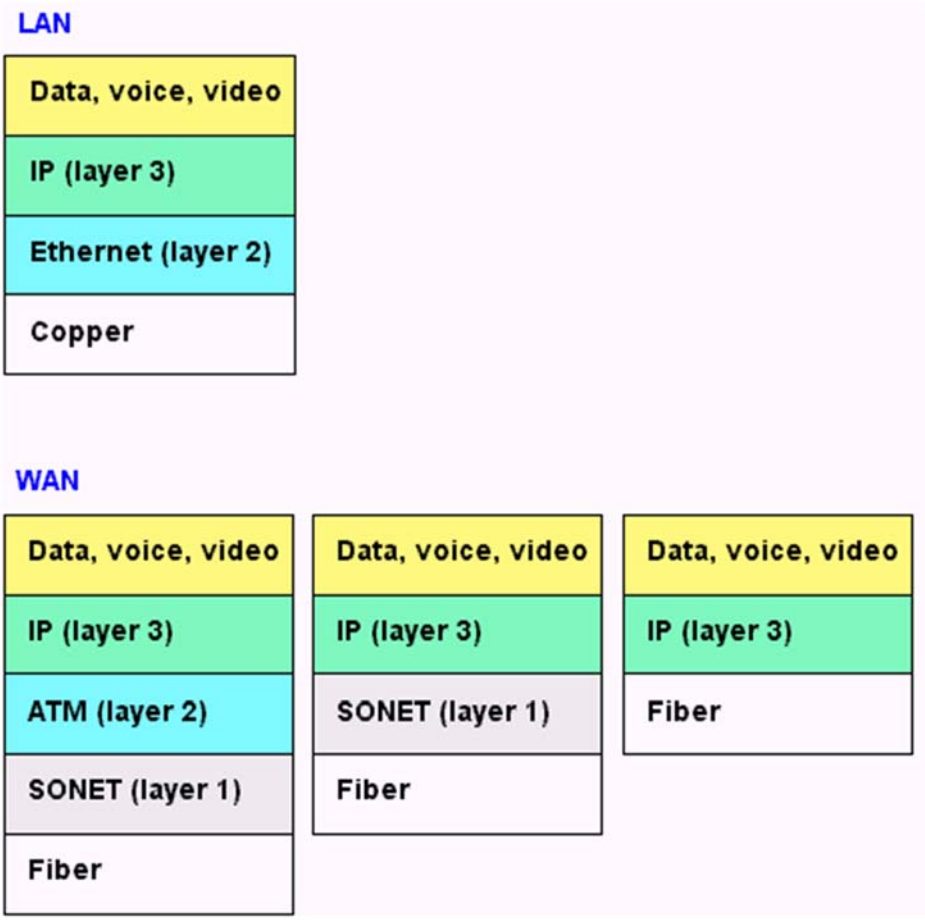
ATM Over SONET
Telcordia's GR-2837 standard maps ATM cells onto SONET, turning a SONET pipe into a cell-switched (packet-switched) transmission carrier that utilizes the full bandwidth of the medium without waste. See 10 Gigabit Ethernet.

SONET CIRCUITS

Optical Channel	Electrical Channel	Speed (Mbps)
OC-1	STS-1	51.84
OC-3	STS-3	155.52
OC-3c	STS-3c	155.52
OC-12	STS-12	622.08
OC-12c	STS-12c	622.08

OC-48 STS-48 2488.32
OC-192 STS-192 9953.28
OC-768 STS-768 39813.12

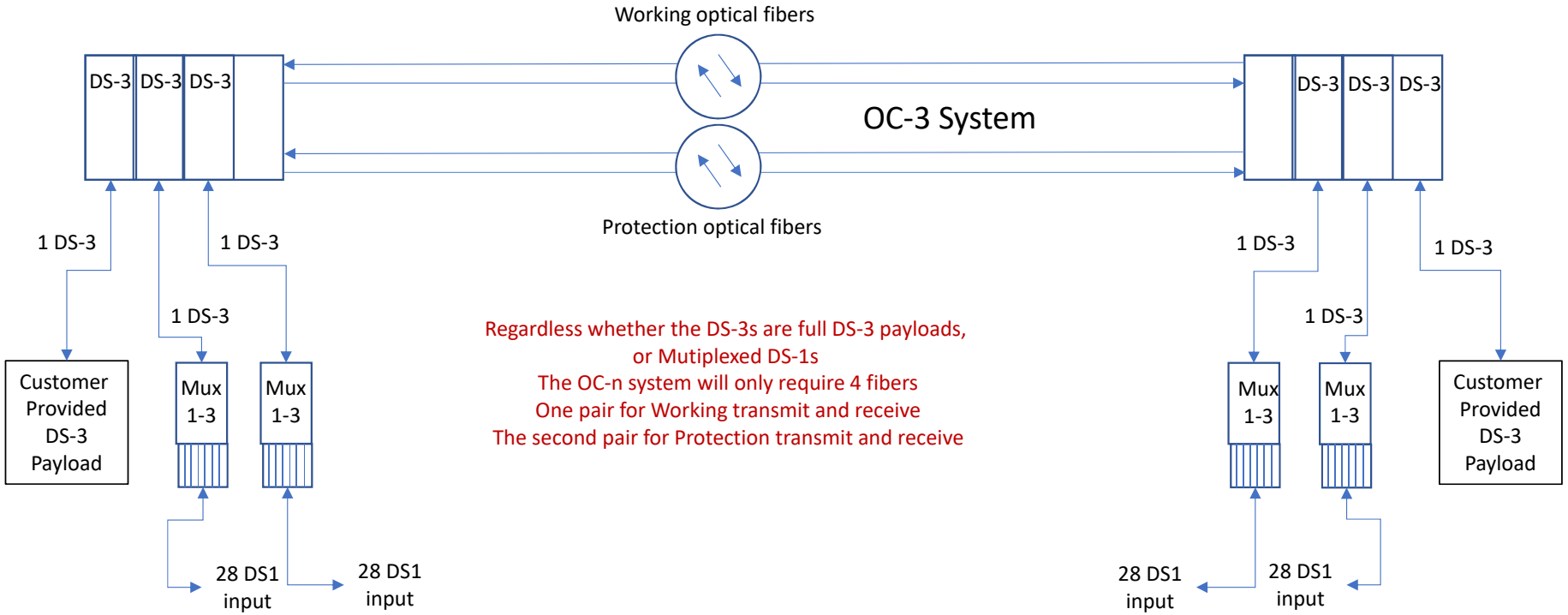
OC = Optical Carrier
STS = Synchronous Transport Signal
c = concatenated



Transporting IP
In a WAN or over the Internet, IP traffic is widely carried over SONET lines, either using ATM as a management layer or over SONET directly. In the future, IP is expected to travel directly over DWDM fiber (rightmost diagram).

ATTACHMENT D

to Albright Declaration


Working optical fibers
DS-3
DS-3
DS-3
OC-3 System
DS-3
DS-3
DS-3
Protection optical fibers
1 DS-3
1 DS-3
1 DS-3
1 DS-3
1 DS-3
1 DS-3
Customer Provided DS-3 Payload
Mux 1-3
Mux 1-3
Mux 1-3
Mux 1-3
Customer Provided DS-3 Payload
28 DS1 input
28 DS1 input
28 DS1 input
28 DS1 input
Regardless whether the DS-3s are full DS-3 payloads,
or Mutiplexed DS-1s
The OC-n system will only require 4 fibers
One pair for Working transmit and receive
The second pair for Protection transmit and receive